

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 6798

DATE COMPLAINT FILED: Mar. 18, 2014

DATE OF NOTIFICATION: Mar. 25, 2014

LAST RESPONSE RECEIVED: June 10, 2014

DATE ACTIVATED: Sept. 10, 2014

EXPIRATION OF SOL: Feb. 14, 2019 (earliest)
July 10, 2020 (latest)

ELECTION CYCLE: 2014

COMPLAINANTS:

Campaign Legal Center
Democracy 21

RESPONDENTS:

The Fund for Louisiana's Future and Charles Spies
in his official capacity as treasurer
David Vitter for U.S. Senate and William Vanderbrook
in his official capacity as treasurer
David Vitter
Lisa Spies
Courtney Guastella

**RELEVANT STATUTES AND
REGULATIONS:**

52 U.S.C. § 30125(e)(1)
52 U.S.C. § 30125(e)(3)
11 C.F.R. § 300.2(b)(3)
11 C.F.R. § 300.2(c)
11 C.F.R. § 300.2(m)
11 C.F.R. § 300.61
11 C.F.R. § 300.64

INTERNAL REPORTS CHECKED: Federal Disclosure Reports

AGENCIES CHECKED:

I. INTRODUCTION

The Complaint alleges that then United States Senator and Louisiana gubernatorial candidate David Vitter, his principal campaign committee, David Vitter for U.S. Senate, and his agents Courtney Guastella and Lisa Spies, solicited, raised and spent non-federal funds (*i.e.*, soft money) for The Fund for Louisiana's Future (the "Fund"), an independent-expenditure-only political committee ("IEOPC") that supported Vitter's candidacies for United States Senate and

1 Governor of Louisiana, in violation of the Federal Election Campaign Act of 1971, as amended,
2 (the "Act").¹

3 Respondents deny violating the Act. The Fund asserts that it permissibly raised and spent
4 non-federal funds because it is independent of the Vitter Committee, and the purpose of the Fund
5 is to make independent expenditures.² Further, Respondents assert that no non-federal funds were
6 solicited by Vitter, the Vitter Committee, or agents acting on Vitter's behalf.³

7 As explained below, the available record indicates that Vitter may have "established,
8 financed, maintained or controlled" the Fund, thus precluding the Fund from permissibly raising
9 and spending non-federal funds, and that Vitter may have solicited non-federal funds for the Fund
10 when his name and photo appeared on at least one Fund solicitation. Accordingly, we recommend
11 that the Commission find reason to believe that the Fund, Vitter, and the Committee violated
12 52 U.S.C. § 30125(e)(1). The record is unclear, however, as to whether Vitter fundraisers
13 Courtney Guastella and Lisa Spies impermissibly solicited non-federal funds while serving as
14 agents of Vitter. Therefore, we recommend that the Commission take no action at this time as to
15 Courtney Guastella and Lisa Spies.

16 II. FACTS

17 David Vitter was elected to the United States Senate from Louisiana in 2004 and 2010.
18 His principal campaign committee is David Vitter for U.S. Senate and William Vanderhook is its
19 treasurer (the "Vitter Committee"). In 2011, Vitter filed a Statement of Candidacy for reelection

¹ See Compl. at 1 (Mar. 18, 2014).

² Fund Resp. at 4 (May 12, 2014) (joint Response filed by the Fund, Guastella, and Spies); *see also* Statement of Organization (Fund for Louisiana's Future) (Jan. 28, 2013).

³ See Vitter Resp. at 5-12 (June 9, 2014) (joint Response filed by Vitter and the Vitter Committee); Fund Resp. at 3-8.

1 to the Senate in 2016.⁴ Courtney Guastella and Lisa Spies have each served as fundraisers for the
2 Committee. Lisa Spies held the title of D.C. Finance Director of the Committee at least as early
3 as March 2014, and Guastella has been identified as the Committee's Finance Director.⁵
4 According to the Vitter Committee, Guastella and Lisa Spies were independent contractors for the
5 Committee and were not employed by the campaign, with Guastella authorized to raise funds
6 within Louisiana, and Lisa Spies authorized to raise funds in Washington, DC, and other locations
7 outside of Louisiana.⁶

8 In January 2013, lawyer Charles Spies formed the Fund and registered it with the
9 Commission as an IEOPC.⁷ The Fund was created amidst speculation that Vitter was considering
10 a run for governor of Louisiana in 2015.⁸ The Fund stated in its FEC Statement of Organization
11 that its purpose is to make independent expenditures in support of conservative candidates in
12 "federal, state, and local elections in Louisiana."⁹ The Fund has acknowledged, however, that it
13 was actually organized for a more specific purpose — to support Vitter in his "political

⁴ Subsequently, in November 2015, Vitter decided to retire from the Senate at the end of his term in January 2017; at all times relevant to this matter, Vitter was a candidate for Senate.

⁵ See Compl. at n.7. See also biography of Lisa Spies, available at <http://www.thelsgroup.com/team>; Alexander Burns, *David Vitter Stokes Buzz about Governor Bid*, POLITICO (May 22, 2013). The Committee first started making disbursements to Guastella in 2005, and to Lisa Spies's fundraising firm, The LS Group, Inc., in 2009. According to the Committee's disclosure reports, between 2011 and 2013, it disbursed \$212,776 to Guastella and \$142,481 to Lisa Spies for "fundraising consulting."

⁶ Vitter Resp. at 11, Fund Resp. at 2.

⁷ See FEC Statement of Organization (Jan. 23, 2013). The Fund, through Charles Spies, also registered a state committee with the Louisiana Board of Ethics. See Louisiana Ethics Administration Program Statement of Organization (Jan. 28, 2013), available at <http://ethics.la.gov/CampaignFinanceSearch/13000776.pdf>. The Louisiana statement of organization identifies Charles Spies as chairperson and treasurer of the state committee.

⁸ See, e.g., Associated Press, *Super PAC fuels speculation that Vitter eyeing run for governor*, THE TIMES PICAYUNE ONLINE (Jan. 28, 2013), available at http://www.nola.com/politics/index.ssf/2013/01/super_pac_could_help_vitter_if.html.

⁹ See FEC Statement of Organization; Fund Resp. at 4, n.3.

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endeavors.”¹⁰ Charles Spies, who serves as the Fund’s treasurer and counsel, described the Fund as a “vehicle for supporters for Sen. Vitter and his conservative leadership” to back his political future whether he decides to seek a third Senate term in 2016 or run for Louisiana governor,” and further explained that it “will help combat Democratic Party officials intent on doing ‘everything they can to stop’ Vitter.”¹¹

Guastella and Lisa Spies were fundraisers for the Fund at the same time they provided fundraising services to the Vitter Committee.¹² From September 5–7, 2013, the Fund held a three-day “Louisiana Bayou Weekend” fundraising event featuring an airboat swamp tour and alligator hunt, and Vitter attended the event.¹³ The Fund sent out a “Save the Date” invitation flyer prior to the event listing Vitter as a “Special Guest” and asking \$5,000 per person to attend.¹⁴ The flyer also stated that the Fund may accept contributions up to \$100,000 per election cycle from individuals, corporations, and other organizations.¹⁵ The invitation lists fundraiser Courtney Guastella as the contact to reserve a spot and contains a disclaimer that it is “Paid for by The Fund for Louisiana’s Future. Not Authorized by any Candidate or Candidate’s Committee.”¹⁶

¹⁰ See Request for Consideration of a Legal Question by the Commission, David Vitter for U.S. Senate (letter from Charles S. Spies, Aug. 17, 2016) at 1 (attached to Memorandum to the Commission, LRA 1027 (Sept. 29, 2016)).

¹¹ Compl. at 3, n.5 citing Fredreka Schouten, *Super PACs Gear Up for Individual Senate Battles*, USA TODAY (Jan. 3, 2014).

¹² During 2013, the Fund disbursed a total of \$148,380 to Guastella and \$27,727 to the LS Group, Inc.; during 2015, the Fund disbursed \$57,000 to Guastella and \$24,992 to LS Group, Inc.

¹³ Compl. at 4.

¹⁴ Compl. Ex. B.

¹⁵ *Id.*

¹⁶ *Id.*

1 Four months after this fundraiser, on January 21, 2014, Vitter announced his candidacy for
2 Governor of Louisiana in the 2015 election.¹⁷ During Vitter's gubernatorial campaign, the Vitter
3 Committee was the Fund's single biggest contributor, ultimately contributing a total of \$950,000
4 between February 2014 and July 2015 — \$100,000 on February 14, 2014; \$740,000 on
5 November 12, 2014; \$50,000 on December 31, 2014; and \$60,000 on July 10, 2015.

6 The Fund supported Vitter throughout his gubernatorial candidacy by continuing to focus
7 its fundraising efforts and activities on Vitter. For example, a screenshot of the Fund's website
8 homepage from March 18, 2014, shows a large picture of Vitter at the top with "*the Fund for*
9 Louisiana's Future" superimposed on the left side of the photograph. Underneath the photo is a
10 discussion of Vitter's proposed federal health care provision with a request for the reader to
11 "sign" a petition supporting the provision by providing name, zip code, and e-mail address.¹⁸ The
12 home page contains a disclaimer, "Paid for by The Fund for Louisiana's Future. Not authorized
13 by any candidate or candidate's committee."¹⁹

14 A screenshot of the website's donation page shows that it was topped by a larger version
15 of the same photograph and statement that appeared on the website's homepage.²⁰ The page
16 offers a selection of contribution amounts ranging from \$25.00 to \$25,000.00 plus "other."²¹ The
17 donation page also contains a disclaimer, "Paid for by The Fund for Louisiana's Future. Not
18 authorized by any candidate or candidate's committee."²² A "Confirm and Submit" field on the

¹⁷ See Vitter Resp. at 2.

¹⁸ Compl. at Ex. A.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

1 donation page contains statements that the contributions may be personal or corporate and that the
2 Fund "may accept contributions up to \$100,000 per election cycle from individuals, corporations,
3 and other organizations."²³

4 The Fund also spent significant funds on activities directly supporting Vitter's
5 gubernatorial candidacy. During Vitter's gubernatorial campaign, the Fund spent approximately
6 \$5.1 million for media buys and production, direct mail design, postage and printing, digital
7 advertising, and phone banks in opposition to Vitter's opponents in the primary and general 2015
8 Louisiana gubernatorial elections.²⁴

9 III. LEGAL ANALYSIS

10 The Complaint alleges that Vitter, the Fund, and Guastella and Spies (as agents of both
11 Vitter and the Fund), violated the Act by soliciting contributions for the Fund in amounts that
12 exceeded the federal contribution limits and came from prohibited sources even though it planned
13 to use the funds it received to support Vitter's election to both state *and* federal office.²⁵ As
14 discussed with specificity below, Respondents deny the allegations.

²³ *Id.* On February 18, 2014, the Fund filed a complaint in the U.S. District Court for the Eastern District of Louisiana seeking declaratory and injunctive relief that the Louisiana campaign finance provision that limited to \$100,000 the amount of money that may be contributed to, or accepted by, a political committee during the course of a four-year period is unconstitutional as applied to committees like the Fund that engage in only independent expenditures. *See Fund for Louisiana's Future v. La. Board. Of Ethics, et al.*, 17 F. Supp.3d 562 (E.D. La. May 2, 2014). The Court granted the Fund's motion for a preliminary and permanent injunction enjoining the Board from enforcing the state limit as to contributions made to political committees that only make independent expenditures. 17 F. Supp.3d at 574.

²⁴ *See* The Fund for Louisiana's Future 2015 Year-End Report, Schedule B (Jan. 29, 2016); *see also* Louisiana Ethics Administration Program Reports for The Fund for Louisiana's Future: 40 Days After General Rpt. (Form 40-G) (Jan. 4, 2016), Election Day Expenditures Rpt. (Form EDE-G) (Dec. 1, 2015), 10 Days Prior to General Rpt. (Form 10-G) (Nov. 12, 2015), 10 Days Prior to Primary Rpt. (Form 10-P) (Oct. 28, 2015), 30 Days Prior to Primary Rpt. (Form 30-P) (Oct. 28, 2015). The Fund raised approximately \$7.4 million and spent approximately \$7.3 million from its inception in January 2013 through the end of 2016.

²⁵ Compl. at 1-5.

1 The Act prohibits federal candidates and officeholders, their agents, and entities directly
2 or indirectly established, financed, maintained or controlled by or acting on behalf of one or more
3 candidates or individuals holding federal office, from "solicit[ing], receiv[ing], direct[ing],
4 transfer[ing], or spend[ing] funds in connection with an election for Federal office . . . unless the
5 funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act."²⁶ This
6 provision, among others enacted as part of the Bipartisan Campaign Reform Act of 2002, was
7 designed to "plug the soft-money loophole."²⁷

8 It is undisputed that the Fund solicited and received funds in connection with an election
9 for federal office that were outside of the limits and prohibitions of the Act.²⁸ We evaluate below
10 whether the solicitation and acceptance of those contributions resulted in any of the Respondents
11 violating the soft money prohibition of the Act, concluding that there is reason to believe that
12 the Fund, Vitter, and the Committee impermissibly raised and spent non-federal funds because the
13 Fund may have been established, financed, maintained and controlled by Vitter; and because
14 Vitter may have authorized the Fund to use his name on a fundraiser invitation soliciting non-
15 federal funds without proper disclaimers.²⁹

²⁶ 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

²⁷ *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

²⁸ The Fund's stated purpose is to support conservative candidates in both federal and non-federal elections, and its treasurer has publicly explained that its purpose to support Vitter's candidacies in both the Senate and gubernatorial elections. *See supra* notes 9, 10, 11. Further, the Fund's disclosure reports show that, as an IEOPC, the Fund accepted numerous contributions from otherwise impermissible sources, and in amounts that exceed the Act's monetary limitations.

²⁹ The "soft money" provision of the Act provides an exception for the solicitation, receipt, or spending of funds by an individual who is also a candidate for State or local office solely in connection with such election for State or local office if the solicitation, receipt, or spending of funds is permitted under State law and refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate. *See* 52 U.S.C. § 30125(e)(2). Here, the exception does not apply (and Respondents do not argue that it does) because, as noted above, the Fund was formed to support Vitter in his political endeavors, both state and federal. Vitter was a United States Senator throughout the time period relevant to this matter, and did not announce that he was not running for re-election to federal office until after he lost the gubernatorial election.

A. There is Reason to Believe that the Fund, Vitter, and the Committee Impermissibly Raised and Spent Non-Federal Funds

1. The factual record demonstrates that the Fund may have been an entity established, financed, maintained, or controlled by Vitter

To determine whether a candidate or his or her agent “directly or indirectly establishes, finances, maintains, or controls” an entity, the Commission considers a non-exhaustive list of ten factors set forth in 11 C.F.R. § 300.2(c)(2), as well as any other relevant factors, in the context of the overall relationship between the federal candidate or officeholder and the entity.³⁰ Among those factors is whether the candidate “provides funds or goods in a significant amount or an ongoing basis to the entity,” and whether the candidate “has authority or ability to direct or participate in the governance of the entity,” or “had an active or significant role in the formation of the entity.”³¹

The key factor in this matter is whether the Vitter Committee provided funds in a “significant amount or an ongoing basis” to the Fund. The Commission has approached the question of what constitutes “a significant amount” on a case-by-case basis in view of all the relevant circumstances.³² It has explained that “amounts that are so large or . . . that comprise such a substantial percentage of the organization’s receipts” would be considered “financing” a committee under section 300.2.³³ In Advisory Opinion 2006-04 (Tancredo), the Commission considered whether contributions constituting 50% and 25% of the total funds received by an

³⁰ See Advisory Op. 2006-04 (Tancredo) at 3.

³¹ *Id.* § 300.2(c)(2)(ii), (v), (vii), (ix).

³² *Id.* § 300.2(c)(2).

³³ See *id.*; Advisory Op. 2004-29 (Akin) at n.4; Advisory Op. 2004-25 (Corzine) at 4.

1 entity at the time the contribution was made would be a significant amount.³⁴ The Commission
2 determined that 50% would be a significant amount, and that "significant" did not require a
3 majority of funds to be provided by a single source.³⁵ The Commission further determined that
4 25% of total funds was also a significant amount when considered in the context of the overall
5 relationship between the sponsor and the entity.³⁶

6 The current record provides reason to believe that the Fund was established, financed,
7 maintained, or controlled by Vitter or his agents because the Vitter Committee "provide[d] funds
8 ... in a significant amount or an ongoing basis" to the Fund. The Vitter Committee provided the
9 Fund with a total of \$950,000 on an ongoing basis over approximately a year and a half.³⁷ This
10 amount makes the Vitter Committee the Fund's single biggest contributor by far over the course
11 of its entire existence (the next largest contributor provided only \$255,000).³⁸ In 2014, the
12 contributions from the Vitter Committee represented 37% of the total funds raised that year.
13 Therefore, relative to the funds raised by any other single source, the contributions from the Vitter
14 Committee represent a "substantial percentage of the organization's receipts."³⁹ And further

³⁴ AO 2006-04 (Tancredo) at 3-5.

³⁵ *Id.* at 4.

³⁶ *Id.* at 4-5. The advisory opinion was submitted on behalf of Congressman Thomas Tancredo, who was interested in contributing campaign committee funds to a state ballot initiative committee. Among the contextual factors considered by the Commission in determining that 25% funding was a "significant amount" was that the funds provided by Tancredo's committee would be used as "seed money" for the ballot initiative committee, the ballot initiative committee would share its polling data with Tancredo, and that Tancredo was closely identified with the issue being supported by the ballot initiative and intended to spend his committee's funds to directly support the ballot initiative. *Id.*

³⁷ The contributions from the Vitter Committee to the Fund were as follows: on February 14, 2014 -- \$100,000; on November 12, 2014 -- \$740,000; on December 31, 2014 -- \$50,000; on July 10, 2015 -- \$60,000.

³⁸ See Fund for Louisiana's Future 2015 Year-End Report, Schedule A, Receipts (\$225,000 aggregate receipts from a corporate executive as follows: September 23, 2015 - \$100,000; November 10, 2015 - \$50,000; November 13, 2015 - \$75,000).

³⁹ See AO 2006-04 (Tancredo) at 3.

1 examination of the Fund's overall receipts at the time of each of the Vitter Committee's
2 individual contributions shows that the Vitter Committee had contributed 23% of the Fund's total
3 receipts at the time of both the November 12 and December 31, 2014, contributions.⁴⁰

4 The context of the overall relationship between Vitter and the Fund provides further
5 reason to believe that the funds provided by the Vitter Committee were a "substantial percentage
6 of the organization's receipts" and, thus, that the Fund was established, financed, maintained, or
7 controlled by Vitter.⁴¹ The Fund has acknowledged that it was formed to support Vitter. Of the
8 approximately \$7.4 million dollars the Fund spent in its lifetime, there is no indication that it
9 solicited any contributions or made any expenditures to further the election of any other
10 candidate.⁴² Further, Vitter was involved in the Fund's fundraising efforts, which were focused
11 exclusively on raising funds to help get Vitter elected to office in Louisiana. Most notably, Vitter
12 was featured on the invitation for the Fund's Louisiana Bayou Weekend fundraiser as a "special
13 guest" (no other candidate is pictured or mentioned on the flyer),⁴³ and Vitter attended the

⁴⁰ At those times, the Fund had received a total of \$3,201,043 and \$3,920,543, respectively. *See id.* at 4 (examining the proposed contributions from Tancredo's campaign committee as percentage of overall lifetime receipts of the state ballot initiative committee at the time the contribution was to be made). Based on the Fund's federal disclosure reports, it appears that its activities essentially ceased after the Louisiana gubernatorial election in November 2015.

⁴¹ *See* 11 C.F.R. § 300.2(c)(2).

⁴² The Fund did make a single \$250,000 contribution to the Republican Governors Association in 2015. *See* Fund for Louisiana's Future 2015 Year-End Report, Schedule B, Disbursements (disclosing \$250,000 contribution to Republican Governors Association made on November 13, 2015).

⁴³ The Fund's treasurer, Charles Spies, provided a declaration in the lawsuit the Fund filed against Louisiana, *see* n.23 *supra*, in which he averred that the Fund "was not established, financed, maintained, or controlled by a political committee authorized by any political candidate for office." *Fund for Louisiana's Future*, 17 F. Supp. 3d 562, 573 (E.D. La. May 2, 2014). The Court accepted the assertion in the Fund's declaration and determined that the Fund was independent. The Court, however, did not have the benefit of the information currently before the Commission, *e.g.*, there is no indication that the Court was aware of the \$100,000 that the Vitter Committee had already contributed to the Fund at that point in time.

1 fundraiser.⁴⁴ Moreover, Vitter is the face of the Fund's website — his photograph and statements
2 are prominently and exclusively featured on the website, including on its donation page. Finally,
3 the Fund uses the same fundraising consultants (Lisa Spies and Guastella) as the Vitter
4 Committee, an overlap which may indicate a "formal or ongoing relationship" of the sort that the
5 Commission's regulation suggests may serve as evidence of a covered relationship under section
6 30125(e) to conclude that the Committee "established, financed, maintained, or controlled the
7 Fund."⁴⁵

8 All of these facts reflect a relationship between the Vitter Committee and the Fund that
9 was bound by common goals (getting Vitter elected), overlapping consultants (Spies and
10 Guastella), fundraising coordination (the Bayou fundraiser), and the Vitter Committee's
11 significant financial investment in the Fund (almost a million dollars provided to the Fund over a
12 year and a half). At this stage in the enforcement process, *i.e.*, the initial reason to believe stage,
13 these facts collectively support a finding that Vitter may have established, financed, maintained,
14 or controlled the Fund as set forth in section 300.2(c) by providing funds "in a significant amount
15 or an ongoing basis" to the Fund. A reason to believe determination is not conclusive that
16 Respondents violated the Act but rather recognizes the seriousness of the allegations and provides
17 an opportunity to conduct an administrative fact-finding inquiry to resolve whether in fact a

⁴⁴ The Commission has concluded that federal candidates may appear as a special guest at a so-called single-candidate Super PAC fundraisers without violating the soft money provisions of the Act at 52 U.S.C. § 30125(e) so long as the candidate complies with the requirements at 11 C.F.R. § 300.64 and restricts any solicitations to federal funds. *See* Advisory Opinion 2015-09 at 8 (Senate Maj. PAC, *et al.*). *See also* 11 C.F.R. § 300.64(b)(1); *see also* Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events, 75 Fed. Reg. 24,375, 24,379 (May 5, 2010) ("Non-Federal Fundraising Events Revised E&J"). It has never, however, concluded that one could do so if non-federal funds are being solicited at such an event, including where the non-federal funds are specifically solicited for the support of that particular candidate. *See* Advisory Opinion 2015-09 at 8, n.7 (Senate Maj. PAC, *et al.*).

⁴⁵ 11 C.F.R. § 300.2(c)(iv)-(vi).

1 violation occurred.⁴⁶ The Commission has determined that a reason to believe finding is
2 appropriate "in cases where the available evidence in the matter is at least sufficient to warrant
3 conducting an investigation."⁴⁷ Under the circumstances presented here, an investigation is
4 warranted to determine the nature and extent of the relationship between Vitter, the Vitter
5 Committee, and the Fund.⁴⁸

6 Accordingly, we recommend that the Commission find reason to believe that The Fund for
7 Louisiana's Future and Charles Spies in his official capacity as treasurer, David Vitter, and David
8 Vitter for U.S. Senate Committee and William Vanderbrook in his official capacity as treasurer
9 the violated 52 U.S.C. § 30125(e)(1) by soliciting, receiving, directing, transferring, or spending
10 non-federal funds to advance the federal candidacy of Senator Vitter.

11 2. The factual record supports a reasonable inference that Vitter or his agent
12 authorized the use of his name and photograph on a solicitation for non-
13 federal funds
14

15 The Complaint alleges that Vitter solicited non-federal funds because (1) the invitation to
16 the Louisiana Bayou Fundraiser does not contain any disclaimers that Vitter is soliciting only
17 contributions that comply with federal limits and source prohibitions,⁴⁹ and (2) Vitter is the only

⁴⁶ See Statement of Policy Regarding Commission Act in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007) (A reason to believe finding indicates "only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred.").

⁴⁷ See *id.* (reason to believe finding followed by an investigation is appropriate where complaint "credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred" and, if so, its exact scope).

⁴⁸ These same factors may also establish that the Fund was an entity "acting on behalf" of Vitter for the purposes of section 30125(e). The Fund's treasurer expressly acknowledged that the Fund was formed to provide support for Vitter, and there is no evidence that the Fund solicited any contributions or made any expenditures to further the election of any other candidate. Although the Response characterizes the support as "independent," the factual record suggests that such a claim is dubious given the relationship between the Fund and Vitter, as described above.

⁴⁹ Compl. at 6. Louisiana's Campaign Finance Disclosure Act allows individuals and legal entities (including corporations) to contribute to political action committees an aggregate amount of \$100,000 over a four calendar year period. LSA-R.S. 18:1505.2K.(1)(2013).

1 candidate pictured on the Fund's website, which solicits non-federal funds, but the website does
2 not contain a disclaimer stating that Vitter is soliciting contributions that only comply with the
3 Act's federal limits and source prohibitions.⁵⁰

4 As noted above, federal officeholders and candidates are subject to the Act's amount
5 limitations and source prohibitions when they solicit contributions on behalf of committees,
6 including IEOPCs.⁵¹ If pre-event publicity⁵² for a non-federal fundraising event contains a
7 solicitation of funds in amounts exceeding the Act's contribution limits or from prohibited
8 sources, a federal candidate, officeholder or an agent may approve, authorize, agree, or consent to
9 the use of his or her name or likeness in the invitation, only if: (1) the federal candidate or
10 officeholder is identified as a "special guest," or in any other manner not specifically related to
11 fundraising; and (2) the invitation includes a clear and conspicuous disclaimer that the solicitation
12 is not being made by the federal candidate or officeholder.⁵³

⁵⁰ Compl. at 5.

⁵¹ See Advisory Op. 2011-12 (House Majority PAC) at 3; 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61; see also Advisory Op. 2015-09 (Senate Majority PAC, *et al.*) at 8. The Commission defines "to solicit" to mean "to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value." 11 C.F.R. § 300.2(m); see Definitions of "Solicit" and "Direct" Final Rules, 71 Fed. Reg. 13,926 ("Solicit & Direct E&J"). In the Commission's Explanation and Justification, it noted that the revised definition of "to solicit" "covers not only communications that *explicitly or directly* request contributions or donations, but also communications that *implicitly or indirectly* seek to elicit a contribution or donation, and does not depend on the use of certain 'magic words.' *Id.* at 71 Fed. Reg. at 13,928 (emphasis in the original). A communication is a solicitation if it "is specifically dedicated to facilitating the making of a contribution or donation, or automatically redirects the Internet user to such a page, or exclusively displays a link to such a page." 11 C.F.R. § 300.2(m)(1)(iii); Solicit & Direct E&J, 71 Fed. Reg. at 13,931-34 ("Solicit & Direct E&J").

⁵² Pre-event publicity includes invitation materials, regardless of the format or medium of the communication. 11 C.F.R. § 300.64(c); Non-Federal Fundraising Events Revised E&J, 75 Fed. Reg. at 24,380.

⁵³ 11 C.F.R. § 300.64(c)(3)(i)(A), (B); Non-Federal Fundraising Events Revised E&J, 75 Fed. Reg. at 24,381. The disclaimer must be of sufficient type size to be clearly readable by the recipient, contained in a printed box set apart from the other contents of the communication, and be printed with a reasonable degree of color contrast between the background and written statement. 11 C.F.R. §§ 300.64(c)(3)(ii), 110.11(c)(2). Examples of conforming disclaimers include: (1) "[Name of Federal candidate/officeholder] is appearing at this event only as a featured speaker. [Federal candidate/officeholder] is not asking for funds or donations; or (2) "All funds solicited in connection with this event are by [name of non-Federal candidate or entity], and not by [Federal candidate/officeholder]." 11 C.F.R. § 300.64(c)(3)(iv).

As discussed in detail below, the record supports a reasonable inference that Vitter or his agent approved the use of his name and photograph on the invitation soliciting non-federal funds for the Louisiana Bayou Fundraiser, but provides less information relevant to the website. We recommend, therefore, that the Commission find reason to believe that Vitter impermissibly solicited non-federal funds in connection with the fundraiser invitation, but defer making findings with respect to the Fund's website.⁵⁴

a. *"Louisiana Bayou Weekend" Fundraiser Invitation*

As noted above, the flyer invitation for the "Louisiana Bayou Weekend" Fundraiser features Vitter as the "special guest," specifies that the cost to attend the event as \$5,000, and lists Guastella's e-mail address as the method to reserve a spot for the event.⁵⁵ The invitation contains two disclaimers. The first disclaimer appears immediately below Guastella's e-mail address and reads as follows:

Contributions to The Fund for Louisiana's Future are not deductible as charitable contributions for federal income tax purposes. Contributions from foreign nationals are prohibited. Federal government contractors should consult counsel prior to making a contribution to The Fund for Louisiana's Future. The Fund for Louisiana's Future is registered with the Federal Election Commission as an independent expenditure-only committee and the Louisiana Board of Ethics as a state PAC. The Fund for Louisiana's Future may accept contributions up to \$100,000 per election cycle from individuals, corporations, and other organizations. The Fund for Louisiana's Future's spending is independent, and it does not make contributions to, or coordinate its spending with, any candidates or political parties.⁵⁶

⁵⁴ This basis for liability is independent of the conclusions and recommendations set forth in Sect. III.A.1., above.

⁵⁵ Compl. at Ex. B.

⁵⁶ *Id.*

1 The second disclaimer appears in a box immediately below the first disclaimer and reads:

2 Paid for by The Fund for Louisiana's Future.
3 Not Authorized by any Candidate or Candidate's Committee.
4 6804 Marshall Foch Street, New Orleans, LA 70124.
5 (202) 722-0909. LouisianasFuture.com.
6

7 The Complaint alleges that Vitter, through his agent, Guastella, authorized the solicitation
8 on the invitation and, as a result, Vitter impermissibly solicited contributions up to \$100,000 per
9 election cycle from individuals, corporations and other organizations because the solicitation was
10 not limited solely to a non-federal election.⁵⁷ The Complaint also argues that the disclaimers on
11 the invitation flyer are defective because they do not contain "a clear and conspicuous" statement
12 that the solicitation is not being made by Vitter, the federal candidate.⁵⁸

13 In response, the Committee asserts that Vitter did not approve the use of his name on the
14 flyer, nor does the flyer expressly or implicitly state that Vitter is extending the invitation to
15 attend or solicit a contribution.⁵⁹ Both the Committee and the Fund argue that as a "special
16 guest" Vitter was not making the solicitation, and that the Commission's regulations permit the
17 use of his name on the flyer as a "special guest," and doing so does not constitute a solicitation of
18 funds by him.⁶⁰ They further argue that, even if the flyer were misconstrued to be a solicitation
19 by Vitter, the flyer would be permissible because the amount requested complies with the amount
20 that may be solicited by federal candidates and officeholders for an IEOPC.⁶¹

⁵⁷ Compl. at 6-8, 11, n.22.

⁵⁸ Compl. at 7 citing 11 C.F.R. § 300.64(C)(3)(i)(A)-(B); *Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events*, Final Rules and Explanation and Justification, 75 Fed. Reg. 24,375, 24,381 (May 5, 2010).

⁵⁹ Vitter Resp. at 5-6.

⁶⁰ *Id.* at 1, 5; Fund Resp. at 8-10.

⁶¹ Fund Resp. at 9; Vitter Resp. at 6.

1 As the invitation solicits contributions from federally impermissible sources and appears
2 to solicit amounts up to \$100,000, if Vitter or his agent "approve[d], authorize[d], agree[d] to, or
3 consent[ed] to the use of the [his] . . . name or likeness in [the] publicity," the invitation required a
4 disclaimer clearly and conspicuously stating that the solicitation is not being made by him.⁶²
5 Vitter denies that he approved the use of his name on the invitation,⁶³ but his response is silent as
6 to whether anyone else from his campaign, acting on his behalf, approved, authorized, agreed to,
7 or consented to the inclusion of his name on the invitation. Nor does the Fund address in its own
8 response whether Vitter or his campaign consented to the use of his name in the invitation.
9 Moreover, the fact that Guastella (who was also fundraising for the Vitter Committee during this
10 time period⁶⁴) appears as the contact person on the invitation, raises questions as to whether she,
11 as an agent of Vitter, approved the use of his name and likeness on the invitation or otherwise
12 secured his approval.⁶⁵ In light of the Fund's acknowledged purpose to support Vitter in his
13 "political endeavors," and the commonalities between the Fund and Vitter, as described above, it

⁶² See 11 C.F.R. § 300.64(c)(3)(i)(A),(B); *see also* Non-Federal Fundraising Events Revised E&J, 75 Fed. Reg. at 24,381. Here, the existing disclaimers do not conform to the regulation's disclaimer specifications because they do not clearly state that Vitter is not soliciting funds. *See, e.g.*, 11 C.F.R. § 300.64(c)(3)(iv); Non-Federal Fundraising Events Revised E&J, 75 Fed. Reg. at 24,381. The flyer fails to state that corporate and labor union contributions are prohibited, and failure to do so constitutes a solicitation of those funds, even if only implicitly. *See* First Gen. Counsel's Rpt. at 11-12, MUR 6529 (McLeod). *See* 52 U.S.C. § 30125(e)(1)(A), (B).

⁶³ Vitter's Response states, "even assuming *arguendo* that Senator Vitter approved of the use of his name on the flyer (which he did not)..." Vitter Resp. at 5.

⁶⁴ *See* David Vitter for U.S. Senate, 2013 October Quarterly Report at 80-81 (Oct. 14, 2013) (disclosing disbursements to Guastella as a fundraising consultant as follows: July 1, 2013 — \$4,000; August 1, 2013 — \$4,000; September 2, 2013 — \$4,000).

⁶⁵ Without a clear record that no one acting as Vitter's agent approved the use of his name or photo on the invitation, the facts of this matter are distinguishable from those in MUR 6075 (Bill Zedler) in which the Commission found no reason to believe that U.S. Representatives Joe Barton and Kay Granger violated the Act where their agreements to serve as "honorary hosts" at a Zedler campaign fundraiser were made through staff and neither they, nor their respective staffs, reviewed or were otherwise aware of, and had not agreed to be featured in, the pre-event publicity that solicited non-federal funds. *See* Factual & Legal Analysis at 2, MUR 6075. This distinction in the factual record (in addition to the fact that Barton and Granger, unlike Vitter, were mere honorary hosts and not also beneficiaries of the event; and that here, the contact name on the invitation is an individual who simultaneously serves as a fundraising agent for Vitter) makes MUR 6075 materially different from this matter.

1 is reasonable at the initial reason to believe stage to infer that Vitter or one of his agents
2 “approve[d], authorize[d], agree[d] to, or consent[ed] to” the use of his name and photograph in
3 the invitation.⁶⁶ Further, Vitter’s denial that he authorized the use of his name and photograph
4 does not overcome this inference because the denial is limited only to Vitter personally, thereby
5 failing to address the possibility that one of his agents provided authorization on his behalf.
6 Accordingly, we recommend that the Commission find reason to believe that Vitter violated
7 52 U.S.C. § 30125(e) in connection with the Louisiana Bayou Weekend fundraiser invitation.

8 *b. The Fund’s Website*

9 The homepage of the Fund’s website focuses on Vitter. The website as it appeared on
10 March 18, 2014, discusses Vitter’s legislation proposing an amendment to “cut health subsidies
11 for congressional and senior executive branch officials” and asks the reader to “sign” a petition
12 supporting the legislation by providing the reader’s name, zip code, and e-mail address.⁶⁷ At the
13 top of the homepage is a banner containing the words: “*the Fund for Louisiana’s Future*,” and a
14 photograph of Vitter next to a link labeled “Contribute.” Clicking the “Contribute” link redirects
15 the reader to a separate web page that provides instructions on how to make a contribution to the
16 Fund in amounts varying from \$25 to \$25,000 or more. This separate web page contains the same
17 banner and photograph of Vitter.

18 The homepage contains two disclaimers, the first states, “Paid for by The Fund for
19 Louisiana’s Future. Not authorized by any candidate or candidate’s committee.” A second
20 disclaimer sets forth:

⁶⁶ See *supra* pp. 11-12 (discussing reason to believe standard).

⁶⁷ Compl. Ex. A.

1 The Fund for Louisiana's Future is registered with the Federal
2 Election Commission as an independent expenditure-only
3 committee and the Louisiana Board of Ethics as a state PAC. The
4 Fund for Louisiana's Future may accept contributions up to
5 \$100,000 per election cycle from individuals, corporations, and
6 other organizations.
7

8 The Complaint argues that the website violates the Act because it contains a photograph of
9 Vitter, but does not include disclaimers stating that he is soliciting only contributions that comply
10 with federal limits and source prohibitions.⁶⁸ Both Responses assert that neither Vitter nor the
11 Committee approved, authorized, agreed to, or otherwise consented to the use of Vitter's pictures
12 on the Fund website, and they argue that use of Vitter's publicly available photographs does not
13 mean there was coordination, does not taint independent speech, and does not constitute a
14 solicitation by Vitter.⁶⁹ As to the "Contribution" page, they assert that the solicitation was being
15 made by the Fund, and argue that because there is no statement by Vitter urging persons to make
16 a contribution in any amount, that no disclaimer was required.⁷⁰

17 As with the fundraiser invitation, if Vitter approved the use of his photograph on the
18 Fund's website, he violated section 30125(e) because the website contains a donation page, which
19 solicits funds in amounts exceeding the limitations, and from sources prohibited by the Act. A
20 photograph of Vitter appears at the top of the Fund's home page next to a link labeled
21 "contribute," and a larger photograph of him occupies nearly one-quarter of the donation page

⁶⁸ *Id.* at 4-5, Ex. A.

⁶⁹ Fund Resp. at 11; Vitter Resp. at 12-14 citing MUR 5711 (Angelides); MUR 5743 (Betty Sutton for Congress); MUR 5996 (Tim Bee). In addition, both Responses argue that the display of Vitter's photo on the homepage did not constitute a solicitation by him because the homepage itself was not a solicitation and not dedicated to making contributions. Fund Resp. at 10-11; Vitter Resp. at 14.

⁷⁰ Fund Resp. at 11-12; Vitter Resp. at 14.

1 asking for contribution amounts ranging from \$25 to \$25,000 or "Other."⁷¹ A statement below
2 "Confirm and Submit" includes that "The Fund for Louisiana's Future may accept contributions
3 up to \$100,000 per election cycle from individuals, corporations, and other organizations."⁷²
4 Both the home page and donation page contain a disclaimer stating: "Paid for by The Fund for
5 Louisiana's Future. Not authorized by any candidate or candidate's committee."⁷³

6 Even if the Fund obtained Vitter's photograph from publicly available material, the
7 question remains whether Vitter or his agents approved, authorized, agreed, or consented to the
8 use of his photograph on the Fund's website. Unlike with the fundraiser invitation, Respondents
9 all deny that Vitter or the Committee approved the use of his photographs on the website. The
10 other compelling facts about the connections between the Fund and Vitter still exist, however, and
11 could reasonably support an inference that Vitter or one of his agents "approve[d], authorize[d],
12 agree[d] to, or consent[ed] to" the use of his name and photograph in the Fund's website.⁷⁴ But in
13 light of the denials, we do not recommend that the Commission make any specific findings at this
14 time with respect to this allegation about the use of Vitter's name and likeness on the Fund's
15 website. The proposed investigation would likely provide additional information that would
16 address the circumstances of the Fund's use of Vitter's name and photograph on its website and
17 allow the Commission to make a fully informed decision on this specific allegation at the next
18 stage of the matter.

⁷¹ Compl. Ex. A.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See *supra* pp. 8-11.

B. The Commission Should Take No Action At This Time With Respect to the Allegation that Vitter's Fundraisers Impermissibly Solicited Non-Federal Funds As His Agents

The Complaint alleges that Courtney Guastella and Lisa Spies, while acting as agents for Vitter and his Committee, impermissibly solicited non-federal funds on behalf of the Fund.⁷⁵ As a basis for the allegation, the Complaint asserts that Guastella and Lisa Spies are employed as fundraising consultants for Vitter's authorized committee and his leadership PAC and that they have actual authority from him to solicit contributions on his behalf.⁷⁶ The Complaint acknowledges that Lisa Spies and Guastella are permitted to raise funds on behalf of another organization and can wear "multiple hats,"⁷⁷ but notes that the Commission's advisory opinions require "a clear line between the activities on behalf of the candidate and those on behalf of the state party committees."⁷⁸ Given "[t]he nature, purpose and activities of [the Fund] being focused solely on Vitter's election, the Complaint argues that there was no clear line with respect to Lisa Spies' and Guastella's activities because they do not have a "legitimate and separate principal-agent relationship" with the Fund and that their fundraising activities for the Fund were "simply an extension of their work for Senator Vitter."⁷⁹

While Respondents concede that Guastella and Lisa Spies are fundraising agents for both the Vitter Committee and the Fund,⁸⁰ they assert that the Commission's regulations relating to

⁷⁵ Compl. at 1-2.

⁷⁶ Compl. at 3-4, 11.

⁷⁷ *Id.* at 9-10, citing Advisory Ops. 2003-10 (Rory Reid), 2007-05 (Erik Iverson).

⁷⁸ *Id.* at 10.

⁷⁹ *Id.* at 11-13.

⁸⁰ Fund Resp. at 3; Vitter Resp. at 2-3. Respondents further argue that the Complaint misinterprets Advisory Opinions 2003-10 (Rory Reid) and 2007-05 (Iverson) because these opinions permit "two explicit agency relationships." Fund Resp. at 6; Vitter Resp. at 10.

1 “soft money” do not prohibit individuals who are agents of federal candidates or officeholders
2 from also soliciting non-federal funds for other political parties or outside groups.⁸¹ Respondents
3 explain that Lisa Spies and Guastella are professional fundraising consultants, each with separate
4 consulting businesses servicing multiple clients, and were not employees of either the Vitter
5 Committee or the Fund.⁸² The Vitter Committee further states that it hired Guastella to raise
6 funds for it within Louisiana and separately hired Lisa Spies to raise funds in the Washington,
7 D.C. area and other locations outside of Louisiana.⁸³ According to the Vitter Committee, neither
8 Guastella nor Spies has general authority to “ubiquitously raise funds on behalf of the campaign;
9 instead, their authority is limited and circumscribed to raising contributions for the Campaign that
10 comply with the contribution limits and source prohibitions from their assigned geographic
11 areas.”⁸⁴ The Fund further explains that the separate agreements that Lisa Spies and Guastella
12 have with the Vitter Committee and the Fund (which Respondents did not provide) contain
13 firewall provisions, which prohibit them from soliciting contributions for the Fund when they are

⁸¹ Fund Resp. at 5; Vitter Resp. at 10. The Responses argue that the Act and Commission regulations define an “agent” of a federal candidate or campaign committee as someone who has actual authority, either express or implied, and not apparent authority. Fund Resp. at 6; Vitter Resp. at 6-7. The Vitter Committee further argues that a Federal candidate can only be held liable when the agent is “acting on behalf of the principal, and not when the agent is acting on behalf of other organizations or individuals.” Vitter Resp. at 8-10, citing to Explanation and Justification for Regulations on Prohibited and Excessive Contributions; Non-federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,083 (Dec. 31, 2002) (Prohibited and Excessive Contributions E&J”); Explanation and Justification for the Definitions of “Agent” for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4,975, 4,979 (Jan. 31, 2006) (“Definitions of ‘Agent’ E&J”).

⁸² Vitter Resp. at 2, 7, 9; Fund Resp. at 2-3. According to the Fund, during the period in question Guastella and Lisa Spies performed fundraising consulting work for over ten clients. Fund Resp. at 2.

⁸³ Vitter Resp. at 2.

⁸⁴ *Id.*

1 working in their capacity as fundraising consultants for the Vitter Committee, and vice-versa.⁸⁵

2 An "agent" of a federal candidate or officeholder is "any person who has actual authority,
3 either express or implied," "to solicit, receive, direct, transfer, or spend funds in connection with
4 any election."⁸⁶ The Commission has explained that the purpose of adopting the "actual authority
5 standard" was to "preserve an individual's ability to raise funds for multiple organizations."⁸⁷

6 While the Act restricts the ability of federal candidates and officeholders from raising non-federal
7 funds, "[it] does not prohibit individuals who are agents of the foregoing from also raising non-
8 federal funds for other political parties or outside groups."⁸⁸ Because there is little information in
9 the current record about specific actions taken by Guastella and Lisa Spies in connection with
10 their fundraising duties, it is unclear whether they acted within the limitations of dual-hatted
11 agents. We therefore recommend that the Commission take no action at this time as to Lisa
12 Spies and Courtney Guastella. As with the website, the recommended investigation into the
13 broader relationship between the Fund, Vitter, and the Vitter Committee will likely provide

⁸⁵ Fund Resp. at 2. Respondents did not provide copies of the purported agreements. The Responses are silent as to when the contractors were hired. Based on our review of the Commission's disclosure reports, it appears that the Fund contracted with Guastella around March of 2013 and Spies around June 2013. Vitter's Senate Committee first reported disbursements to Guastella for fundraising services in April 2004 and to Spies in December 2007.

⁸⁶ 11 C.F.R. § 300.2(b)(3). An agent's actual authority is created by manifestations of consent (express or implied) by the principal to the agent about the agent's authority to act on the principal's behalf. *See* Definitions of 'Agent' E&J, 71 Fed. Reg. at 4,975-76; Advisory Op. 2007-05 (Iverson) at 3.

⁸⁷ Definitions of 'Agent' E&J, 71 Fed. Reg. at 4,979 n.9.

⁸⁸ *Id.* at 4,979. We note that the Commission has more recently observed in an advisory opinion that "agents" of a federal committee may solicit non-federal funds "on their own" and "'not at the request or suggestion' of federal candidates." Advisory Op. 2015-09 (Senate Majority PAC, *et al.*) at 7. So long as agents for a federal candidate do not use their campaign title or identify themselves, they may solicit non-federal funds. *Id.* at 7-8. Further, any such solicitation may not be at the same time as solicitations for federal candidates. *Id.* However, the Commission could not agree on the question of whether the individuals would be permitted to raise non-federal funds on behalf of single-candidate committees as defined in the opinion. *Id.* at n.4. This advisory opinion was issued in 2015, after the activity identified in the MUR 6798 Complaint.

1 information that will allow the Commission to make an informed decision on this allegation at the
2 next stage of the matter.

3 **IV. PROPOSED INVESTIGATION**

4 The general focus of the investigation will be on the nature and scope of the relationship
5 between Vitter and the Fund. In particular, we will examine whether Vitter established, financed,
6 maintained, or controlled the Fund pursuant to the factors set forth at 11 C.F.R. § 300.2(c)(2).

7 Based on what we currently know about the relationship between Vitter and the Fund, the
8 investigation would initially focus on whether the candidate "has authority or ability to direct or
9 participate in the governance of the entity," or "had an active or significant role in the formation
10 of the entity," *inter alia*. We will seek to conduct our investigation through voluntary means but
11 recommend that the Commission authorize the use of compulsory process, including the issuance
12 of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.

13 **V. RECOMMENDATIONS**

- 14 1. Find reason to believe The Fund for Louisiana's Future and Charles R. Spies in his
15 official capacity as treasurer violated 52 U.S.C. § 30125(e);
16
- 17 2. Find reason to believe David Vitter for U.S. Senate and William Vanderbrook in his
18 official capacity as treasurer violated 52 U.S.C. § 30125(e);
19
- 20 3. Find reason to believe David Vitter violated 52 U.S.C. § 30125(e);
21
- 22 4. Take no action at this time as to Lisa Spies;
23
- 24 5. Take no action at this time as to Courtney Guastella;
25
- 26 6. Approve the attached Factual and Legal Analyses;
27
- 28 7. Approve the use of compulsory process in this matter, including the issuance of
29 interrogatories, document subpoenas, and deposition subpoenas, as necessary; and
30

8. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

9/7/17
Date

By:

Kathleen M. Guith
Kathleen M. Guith
Associate General Counsel for
Enforcement

Mark Allen/kmg
Mark Allen
Assistant General Counsel

Christine C. Gallagher
Christine C. Gallagher
Attorney

Attachments:

1. Factual and Legal Analysis for David Vitter and the Committee
2. Factual and Legal Analysis for The Fund

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: David Vitter for U.S. Senate and William MUR 6798
Vanderbrook in his official capacity as treasurer
David Vitter

I. INTRODUCTION

The Complaint alleges that then United States Senator and Louisiana gubernatorial candidate David Vitter, his principal campaign committee, David Vitter for U.S. Senate, and his agents Courtney Guastella and Lisa Spies, solicited, raised and spent non-federal funds (*i.e.*, soft money) for The Fund for Louisiana's Future (the "Fund"), an independent-expenditure-only political committee ("IEOPC") that supported Vitter's candidacies for United States Senate and Governor of Louisiana, in violation of the Federal Election Campaign Act of 1971, as amended, (the "Act").¹

Respondents deny violating the Act. Further, Respondents assert that no non-federal funds were solicited by Vitter, the Vitter Committee, or agents acting on Vitter's behalf.²

As explained below, the available record indicates that Vitter may have "established, financed, maintained or controlled" the Fund, thus precluding the Fund from permissibly raising and spending non-federal funds, and that Vitter may have solicited non-federal funds for the Fund when his name and photo appeared on at least one Fund solicitation. Accordingly, the Commission finds reason to believe that Vitter and the Committee violated 52 U.S.C. § 30125(e)(1).

II. FACTS

David Vitter was elected to the United States Senate from Louisiana in 2004 and 2010. His principal campaign committee is David Vitter for U.S. Senate and William Vanderhook is its

¹ See Compl. at 1 (Mar. 18, 2014).

² See Vitter Resp. at 5-12 (June 9, 2014) (joint Response filed by Vitter and the Vitter Committee).

1 treasurer (the "Vitter Committee"). In 2011, Vitter filed a Statement of Candidacy for reelection
2 to the Senate in 2016.³ Courtney Guastella and Lisa Spies have each served as fundraisers for the
3 Committee. Lisa Spies held the title of D.C. Finance Director of the Committee at least as early
4 as March 2014, and Guastella has been identified as the Committee's Finance Director.⁴
5 According to the Vitter Committee, Guastella and Lisa Spies were independent contractors for the
6 Committee and were not employed by the campaign, with Guastella authorized to raise funds
7 within Louisiana, and Lisa Spies authorized to raise funds in Washington, DC, and other locations
8 outside of Louisiana.⁵

9 In January 2013, lawyer Charles Spies formed the Fund and registered it with the
10 Commission as an IEOPC.⁶ The Fund was created amidst speculation that Vitter was considering
11 a run for governor of Louisiana in 2015.⁷ The Fund stated in its FEC Statement of Organization
12 that its purpose is to make independent expenditures in support of conservative candidates in
13 "federal, state, and local elections in Louisiana."⁸ The Fund has acknowledged, however, that it

³ Subsequently, in November 2015, Vitter decided to retire from the Senate at the end of his term in January 2017; at all times relevant to this matter, Vitter was a candidate for Senate.

⁴ See Compl. at n.7. See also biography of Lisa Spies, available at <http://www.thelsgroup.com/team>; Alexander Bums, *David Vitter Stokes Buzz about Governor Bid*, POLITICO (May 22, 2013). The Committee first started making disbursements to Guastella in 2005, and to Lisa Spies's fundraising firm, The LS Group, Inc., in 2009. According to the Committee's disclosure reports, between 2011 and 2013, it disbursed \$212,776 to Guastella and \$142,481 to Lisa Spies for "fundraising consulting."

⁵ Vitter Resp. at 11.

⁶ See FEC Statement of Organization (Jan. 23, 2013). The Fund, through Charles Spies, also registered a state committee with the Louisiana Board of Ethics. See Louisiana Ethics Administration Program Statement of Organization (Jan. 28, 2013), available at <http://ethics.la.gov/CampaignFinanceSearch/13000776.pdf>. The Louisiana statement of organization identifies Charles Spies as chairperson and treasurer of the state committee.

⁷ See, e.g., Associated Press, *Super PAC fuels speculation that Vitter eyeing run for governor*, THE TIMES PICAYUNE ONLINE (Jan. 28, 2013), available at http://www.nola.com/politics/index.ssf/2013/01/super_pac_could_help_vitter_if.html.

⁸ See FEC Statement of Organization.

1 was actually organized for a more specific purpose — to support Vitter in his “political
2 endeavors.”⁹ Charles Spies, who serves as the Fund’s treasurer and counsel, described the Fund
3 as a “vehicle for supporters for Sen. Vitter and his conservative leadership” to back his political
4 future whether he decides to seek a third Senate term in 2016 or run for Louisiana governor,” and
5 further explained that it “will help combat Democratic Party officials intent on doing ‘everything
6 they can to stop’ Vitter.”¹⁰

7 Guastella and Lisa Spies were fundraisers for the Fund at the same time they provided
8 fundraising services to the Vitter Committee.¹¹ From September 5–7, 2013, the Fund held a
9 three-day “Louisiana Bayou Weekend” fundraising event featuring an airboat swamp tour and
10 alligator hunt and Vitter attended the event.¹² The Fund sent out a “Save the Date” invitation flyer
11 prior to the event listing Vitter as a “Special Guest” and asking \$5,000 per person to attend.¹³
12 The flyer also stated that the Fund may accept contributions up to \$100,000 per election cycle
13 from individuals, corporations, and other organizations.¹⁴ The invitation lists fundraiser Courtney
14 Guastella as the contact to reserve a spot and contains a disclaimer that it is “Paid for by The Fund
15 for Louisiana’s Future. Not Authorized by any Candidate or Candidate’s Committee.”¹⁵

⁹ See Request for Consideration of a Legal Question by the Commission, David Vitter for U.S. Senate (letter from Charles S. Spies, Aug. 17, 2016) at 1 (attached to Memorandum to the Commission, LRA 1027 (Sept. 29, 2016)).

¹⁰ Compl. at 3, n.5 citing Fredreka Schouten, *Super PACs Gear Up for Individual Senate Battles*, USA TODAY (Jan. 3, 2014).

¹¹ During 2013, the Fund disbursed a total of \$148,380 to Guastella and \$27,727 to the LS Group, Inc.; during 2015, the Fund disbursed \$57,000 to Guastella and \$24,992 to LS Group, Inc.

¹² Compl. at 4.

¹³ Compl. Ex. B.

¹⁴ *Id.*

¹⁵ *Id.*

1 Four months after this fundraiser, on January 21, 2014, Vitter announced his candidacy for
2 Governor of Louisiana in the 2015 election.¹⁶ During Vitter's gubernatorial campaign, the Vitter
3 Committee was the Fund's single biggest contributor, ultimately contributing a total of \$950,000
4 between February 2014 and July 2015 — \$100,000 on February 14, 2014; \$740,000 on
5 November 12, 2014; \$50,000 on December 31, 2014; and \$60,000 on July 10, 2015.

6 The Fund supported Vitter throughout his gubernatorial candidacy by continuing to focus
7 its fundraising efforts and activities on Vitter. For example, a screenshot of the Fund's website
8 homepage from March 18, 2014, shows a large picture of Vitter at the top with "*the Fund for*
9 Louisiana's Future" superimposed on the left side of the photograph. Underneath the photo is a
10 discussion of Vitter's proposed federal health care provision with a request for the reader to
11 "sign" a petition supporting the provision by providing name, zip code, and e-mail address.¹⁷ The
12 home page contains a disclaimer, "Paid for by The Fund for Louisiana's Future. Not authorized
13 by any candidate or candidate's committee."¹⁸

14 A screenshot of the website's donation page shows that it was topped by a larger version
15 of the same photograph and statement that appeared on the website's homepage.¹⁹ The page
16 offers a selection of contribution amounts ranging from \$25.00 to \$25,000.00 plus "other."²⁰ The
17 donation page also contains a disclaimer, "Paid for by The Fund for Louisiana's Future. Not
18 authorized by any candidate or candidate's committee."²¹ A "Confirm and Submit" field on the

¹⁶ See Vitter Resp. at 2.

¹⁷ Compl. at Ex. A.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

1 donation page contains statements that the contributions may be personal or corporate and that the
2 Fund “may accept contributions up to \$100,000 per election cycle from individuals, corporations,
3 and other organizations.”²²

4 The Fund also spent significant funds on activities directly supporting Vitter’s
5 gubernatorial candidacy. During Vitter’s gubernatorial campaign, the Fund spent approximately
6 \$5.1 million for media buys and production, direct mail design, postage and printing, digital
7 advertising, and phone banks in opposition to Vitter’s opponents in the primary and general 2015
8 Louisiana gubernatorial elections.²³

9 III. LEGAL ANALYSIS

10 The Complaint alleges that Vitter violated the Act by soliciting contributions for the Fund
11 in amounts that exceeded the federal contribution limits and came from prohibited sources even
12 though it planned to use the funds it received to support Vitter’s election to both state *and* federal
13 office.²⁴ As discussed with specificity below, Respondents deny the allegations.

14 The Act prohibits federal candidates and officeholders, their agents, and entities directly
15 or indirectly established, financed, maintained or controlled by or acting on behalf of one or more

²² *Id.* On February 18, 2014, the Fund filed a complaint in the U.S. District Court for the Eastern District of Louisiana seeking declaratory and injunctive relief that the Louisiana campaign finance provision that limited to \$100,000 the amount of money that may be contributed to, or accepted by, a political committee during the course of a four-year period is unconstitutional as applied to committees like the Fund that engage in only independent expenditures. *See Fund for Louisiana’s Future v. La. Board. Of Ethics, et al.*, 17 F. Supp.3d 562 (E.D. La. May 2, 2014). The Court granted the Fund’s motion for a preliminary and permanent injunction enjoining the Board from enforcing the state limit as to contributions made to political committees that only make independent expenditures. 17 F. Supp.3d at 574.

²³ *See* The Fund for Louisiana’s Future 2015 Year-End Report, Schedule B (Jan. 29, 2016); *see also* Louisiana Ethics Administration Program Reports for The Fund for Louisiana’s Future: 40 Days After General Rpt. (Form 40-G) (Jan. 4, 2016), Election Day Expenditures Rpt. (Form EDE-G) (Dec. 1, 2015), 10 Days Prior to General Rpt. (Form 10-G) (Nov. 12, 2015), 10 Days Prior to Primary Rpt. (Form 10-P) (Oct. 28, 2015), 30 Days Prior to Primary Rpt. (Form 30-P) (Oct. 28, 2015). The Fund raised approximately \$7.4 million and spent approximately \$7.3 million from its inception in January 2013 through the end of 2016.

²⁴ Compl. at 1-5.

1 candidates or individuals holding federal office, from “solicit[ing], receiv[ing], direct[ing],
2 transfer[ing], or spend[ing] funds in connection with an election for Federal office . . . unless the
3 funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act.”²⁵ This
4 provision, among others enacted as part of the Bipartisan Campaign Reform Act of 2002, was
5 designed to “plug the soft-money loophole.”²⁶

6 It is undisputed that the Fund solicited and received funds in connection with an election
7 for federal office that were outside of the limits and prohibitions of the Act.²⁷ The Commission
8 evaluates below whether the solicitation and acceptance of those contributions resulted in Vitter
9 or the Committee violating the soft money prohibition of the Act and concludes that there is
10 reason to believe that Vitter and the Committee impermissibly raised and spent non-federal funds
11 because the Fund may have been established, financed, maintained and controlled by Vitter; and
12 because Vitter may have solicited non-federal funds by allowing his name to be used on a
13 fundraiser invitation soliciting non-federal funds.²⁸

²⁵ 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

²⁶ *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

²⁷ The Fund’s stated purpose is to support conservative candidates in both federal and non-federal elections, and its treasurer has publicly explained that its purpose to support Vitter’s candidacies in both the Senate and gubernatorial elections. Further, the Fund’s disclosure reports show that, as an IEOPC, the Fund accepted numerous contributions from otherwise impermissible sources, and in amounts that exceed the Act’s monetary limitations.

²⁸ The “soft money” provision of the Act provides an exception for the solicitation, receipt, or spending of funds by an individual who is also a candidate for State or local office solely in connection with such election for State or local office if the solicitation, receipt, or spending of funds is permitted under State law and refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate. *See* 52 U.S.C. § 30125(e)(2). Here, the exception does not apply (and Respondents do not argue that it does) because, as noted above, the Fund was formed to support Vitter in his political endeavors, both state and federal. Vitter was a United States Senator throughout the time period relevant to this matter, and did not announce that he was not running for re-election to federal office until after he lost the gubernatorial election.

A. The Factual Record Demonstrates That the Fund May have Been an Entity Established, Financed, Maintained, or Controlled By Vitter

To determine whether a candidate or his or her agent “directly or indirectly establishes, finances, maintains, or controls” an entity, the Commission considers a non-exhaustive list of ten factors set forth in 11 C.F.R. § 300.2(c)(2), as well as any other relevant factors, in the context of the overall relationship between the federal candidate or officeholder and the entity.²⁹ Among those factors is whether the candidate “provides funds or goods in a significant amount or an ongoing basis to the entity,” and whether the candidate “has authority or ability to direct or participate in the governance of the entity,” or “had an active or significant role in the formation of the entity.”³⁰

The key factor in this matter is whether the Vitter Committee provided funds in a “significant amount or an ongoing basis” to the Fund. The Commission has approached the question of what constitutes “a significant amount” on a case-by-case basis in view of all the relevant circumstances.³¹ It has explained that “amounts that are so large or . . . that comprise such a substantial percentage of the organization’s receipts” would be considered “financing” a committee under section 300.2.³² In Advisory Opinion 2006-04 (Tancredo), the Commission considered whether contributions constituting 50% and 25% of the total funds received by an entity at the time the contribution was made would be a significant amount.³³ The Commission determined that 50% would be a significant amount, and that “significant” did not require a

²⁹ See Advisory Op. 2006-04 (Tancredo) at 3.

³⁰ *Id.* § 300.2(c)(2)(ii), (v), (vii), (ix).

³¹ *Id.* § 300.2(c)(2).

³² See *id.*; Advisory Op. 2004-29 (Akin) at n.4; Advisory Op. 2004-25 (Corzine) at 4.

³³ AO 2006-04 (Tancredo) at 3-5.

1 majority of funds to be provided by a single source.³⁴ The Commission further determined that
2 25% of total funds was also a significant amount when considered in the context of the overall
3 relationship between the sponsor and the entity.³⁵

4 The current record provides reason to believe that the Fund was established, financed,
5 maintained, or controlled by Vitter or his agents because the Vitter Committee “provide[d] funds
6 ... in a significant amount or an ongoing basis” to the Fund. The Vitter Committee provided the
7 Fund with a total of \$950,000 on an ongoing basis over approximately a year and a half.³⁶ This
8 amount makes the Vitter Committee the Fund’s single biggest contributor by far over the course
9 of its entire existence (the next largest contributor provided only \$255,000).³⁷ In 2014, the
10 contributions from the Vitter Committee represented 37% of the total funds raised that year.
11 Therefore, relative to the funds raised by any other single source, the contributions from the Vitter
12 Committee represent a “substantial percentage of the organization’s receipts.”³⁸ And further
13 examination of the Fund’s overall receipts at the time of each of the Vitter Committee’s

³⁴ *Id.* at 4.

³⁵ *Id.* at 4-5. The advisory opinion was submitted on behalf of Congressman Thomas Tancredo, who was interested in contributing campaign committee funds to a state ballot initiative committee. Among the contextual factors considered by the Commission in determining that 25% funding was a “significant amount” was that the funds provided by Tancredo’s committee would be used as “seed money” for the ballot initiative committee, the ballot initiative committee would share its polling data with Tancredo, and that Tancredo was closely identified with the issue being supported by the ballot initiative and intended to spend his committee’s funds to directly support the ballot initiative. *Id.*

³⁶ The contributions from the Vitter Committee to the Fund were as follows: on February 14, 2014 -- \$100,000; on November 12, 2014 -- \$740,000; on December 31, 2014 -- \$50,000; on July 10, 2015 -- \$60,000.

³⁷ See Fund for Louisiana’s Future 2015 Year-End Report, Schedule A, Receipts (\$225,000 aggregate receipts from a corporate executive as follows: September 23, 2015 - \$100,000; November 10, 2015 - \$50,000; November 13, 2015 - \$75,000).

³⁸ See AO 2006-04 (Tancredo) at 3.

1 individual contributions shows that the Vitter Committee had contributed 23% of the Fund's total
2 receipts at the time of both the November 12 and December 31, 2014, contributions.³⁹

3 The context of the overall relationship between Vitter and the Fund provides further
4 reason to believe that the funds provided by the Vitter Committee were a "substantial percentage
5 of the organization's receipts" and, thus, that the Fund was established, financed, maintained, or
6 controlled by Vitter.⁴⁰ The Fund has acknowledged that it was formed to support Vitter. Of the
7 approximately \$7.4 million dollars the Fund spent in its lifetime, there is no indication that it
8 solicited any contributions or made any expenditures to further the election of any other
9 candidate.⁴¹ Further, Vitter was involved in the Fund's fundraising efforts, which were focused
10 exclusively on raising funds to help get Vitter elected to office in Louisiana. Most notably, Vitter
11 was featured on the invitation for the Fund's Louisiana Bayou Weekend fundraiser as a "special
12 guest" (no other candidate is pictured or mentioned on the flyer),⁴² and Vitter attended the

³⁹ At those times, the Fund had received a total of \$3,201,043 and \$3,920,543, respectively. *See id.* at 4 (examining the proposed contributions from Tancredo's campaign committee as percentage of overall lifetime receipts of the state ballot initiative committee at the time the contribution was to be made). Based on the Fund's federal disclosure reports, it appears that its activities essentially ceased after the Louisiana gubernatorial election in November 2015.

⁴⁰ *See* 11 C.F.R. § 300.2(c)(2).

⁴¹ The Fund did make a single \$250,000 contribution to the Republican Governors Association in 2015. *See* Fund for Louisiana's Future 2015 Year-End Report, Schedule B, Disbursements (disclosing \$250,000 contribution to Republican Governors Association made on November 13, 2015).

⁴² The Fund's treasurer, Charles Spies, provided a declaration in the lawsuit the Fund filed against Louisiana, *see* n.23 *supra*, in which he averred that the Fund "was not established, financed, maintained, or controlled by a political committee authorized by any political candidate for office." *Fund for Louisiana's Future*, 17 F. Supp. 3d 562, 573 (E.D. La. May 2, 2014). The Court accepted the assertion in the Fund's declaration and determined that the Fund was independent. The Court, however, did not have the benefit of the information currently before the Commission, *e.g.*, there is no indication that the Court was aware of the \$100,000 that the Vitter Committee had already contributed to the Fund at that point in time.

1 fundraiser.⁴³ Moreover, Vitter is the face of the Fund's website — his photograph and statements
2 are prominently and exclusively featured on the website, including on its donation page. Finally,
3 the Fund uses the same fundraising consultants (Lisa Spies and Guastella) as the Vitter
4 Committee, an overlap which may indicate a "formal or ongoing relationship" of the sort that the
5 Commission's regulation suggests may serve as evidence of a covered relationship under section
6 30125(e) to conclude that the Committee "established, financed, maintained, or controlled the
7 Fund."⁴⁴

8 All of these facts reflect a relationship between the Vitter Committee and the Fund that
9 was bound by common goals (getting Vitter elected), overlapping consultants (Spies and
10 Guastella), fundraising coordination (the Bayou fundraiser), and the Vitter Committee's
11 significant financial investment in the Fund (almost a million dollars provided to the Fund over a
12 year and a half). At this stage in the enforcement process, *i.e.*, the initial reason to believe stage,
13 these facts collectively support a finding that Vitter may have established, financed, maintained,
14 or controlled the Fund as set forth in section 300.2(c) by providing funds "in a significant amount
15 or an ongoing basis" to the Fund. A reason to believe determination is not conclusive that
16 Respondents violated the Act but rather recognizes the seriousness of the allegations and provides
17 an opportunity to conduct an administrative fact-finding inquiry to resolve whether in fact a

⁴³ The Commission has concluded that federal candidates may appear as a special guest at a so-called single-candidate Super PAC fundraisers without violating the soft money provisions of the Act at 52 U.S.C. § 30125(e) so long as the candidate complies with the requirements at 11 C.F.R. § 300.64 and restricts any solicitations to federal funds. *See* Advisory Opinion 2015-09 at 8 (Senate Maj. PAC, *et al.*). *See also* 11 C.F.R. § 300.64(b)(1); *see also* Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events, 75 Fed. Reg. 24,375, 24,379 (May 5, 2010) ("Non-Federal Fundraising Events Revised E&J"). It has never, however, concluded that one could do so if non-federal funds are being solicited at such an event, including where the non-federal funds are specifically solicited for the support of that particular candidate. *See* Advisory Opinion 2015-09 at 8, n.7 (Senate Maj. PAC, *et al.*).

⁴⁴ 11 C.F.R. § 300.2(c)(iv)-(vi).

1 violation occurred.⁴⁵ The Commission has determined that a reason to believe finding is
2 appropriate “in cases where the available evidence in the matter is at least sufficient to warrant
3 conducting an investigation.”⁴⁶ Under the circumstances presented here, an investigation is
4 warranted to determine the nature and extent of the relationship between Vitter, the Vitter
5 Committee, and the Fund.

6 Accordingly, the Commission finds reason to believe that The Fund for Louisiana’s Future
7 and Charles Spies in his official capacity as treasurer, David Vitter, and David Vitter for U.S.
8 Senate Committee and William Vanderbrook in his official capacity as treasurer the violated
9 52 U.S.C. § 30125(e)(1) by soliciting, receiving, directing, transferring, or spending non-federal
10 funds to advance the federal candidacy of Senator Vitter.

11 **B. The Factual Record Supports a Reasonable Inference That Vitter or His**
12 **Agent Authorized the Use of His Name and Photograph On a Solicitation for**
13 **Non-federal Funds**
14

15 The Complaint alleges that Vitter solicited non-federal funds because (1) the invitation to
16 the Louisiana Bayou Fundraiser does not contain any disclaimers that Vitter is soliciting only
17 contributions that comply with federal limits and source prohibitions,⁴⁷ and (2) Vitter is the only
18 candidate pictured on the Fund’s website, which solicits non-federal funds, but the website does

⁴⁵ See Statement of Policy Regarding Commission Act in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007) (A reason to believe finding indicates “only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred.”).

⁴⁶ See *id.* (reason to believe finding followed by an investigation is appropriate where complaint “credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred” and, if so, its exact scope).

⁴⁷ Compl. at 6. Louisiana’s Campaign Finance Disclosure Act allows individuals and legal entities (including corporations) to contribute to political action committees an aggregate amount of \$100,000 over a four calendar year period. LSA-R.S. 18:1505.2K.(1)(2013).

1 not contain a disclaimer stating that Vitter is soliciting contributions that only comply with the
2 Act's federal limits and source prohibitions.⁴⁸

3 As noted above, federal officeholders and candidates are subject to the Act's amount
4 limitations and source prohibitions when they solicit contributions on behalf of committees,
5 including IEOPCs.⁴⁹ If pre-event publicity⁵⁰ for a non-federal fundraising event contains a
6 solicitation of funds in amounts exceeding the Act's contribution limits or from prohibited
7 sources, a federal candidate, officeholder or an agent may approve, authorize, agree, or consent to
8 the use of his or her name or likeness in the invitation, only if: (1) the federal candidate or
9 officeholder is identified as a "special guest," or in any other manner not specifically related to
10 fundraising; and (2) the invitation includes a clear and conspicuous disclaimer that the solicitation
11 is not being made by the federal candidate or officeholder.⁵¹

⁴⁸ Compl. at 5.

⁴⁹ See Advisory Op. 2011-12 (House Majority PAC) at 3; 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61; see also Advisory Ops. 2015-09 (Senate Majority PAC, *et al.*) at 8. The Commission defines "to solicit" to mean "to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value." 11 C.F.R. § 300.2(m); see Definitions of "Solicit" and "Direct" Final Rules, 71 Fed. Reg. 13,926 ("Solicit & Direct E&J"). In the Commission's Explanation and Justification, it noted that the revised definition of "to solicit" "covers not only communications that *explicitly or directly* request contributions or donations, but also communications that *implicitly or indirectly* seek to elicit a contribution or donation, and does not depend on the use of certain 'magic words.' *Id.* at 71 Fed. Reg. at 13,928 (emphasis in the original). A communication is a solicitation if it "is specifically dedicated to facilitating the making of a contribution or donation, or automatically redirects the Internet user to such a page, or exclusively displays a link to such a page." 11 C.F.R. § 300.2(m)(1)(iii); Solicit & Direct E&J, 71 Fed. Reg. at 13,931-34 ("Solicit & Direct E&J").

⁵⁰ Pre-event publicity includes invitation materials, regardless of the format or medium of the communication. 11 C.F.R. § 300.64(c); Non-Federal Fundraising Events Revised E&J, 75 Fed. Reg. at 24,380.

⁵¹ 11 C.F.R. § 300.64(c)(3)(i)(A), (B); Non-Federal Fundraising Events Revised E&J, 75 Fed. Reg. at 24,381. The disclaimer must be of sufficient type size to be clearly readable by the recipient, contained in a printed box set apart from the other contents of the communication, and be printed with a reasonable degree of color contrast between the background and written statement. 11 C.F.R. §§ 300.64(c)(3)(ii), 110.11(c)(2). Examples of conforming disclaimers include: (1) "[Name of Federal candidate/officeholder] is appearing at this event only as a featured speaker. [Federal candidate/officeholder] is not asking for funds or donations; or (2) "All funds solicited in connection with this event are by [name of non-Federal candidate or entity], and not by [Federal candidate/officeholder]." 11 C.F.R. § 300.64(c)(3)(iv).

As discussed in detail below, the record supports a reasonable inference that Vitter or his agent approved the use of his name and photograph on the invitation soliciting non-federal funds for the Louisiana Bayou Fundraiser. Therefore, the Commission finds reason to believe that Vitter violated 52 U.S.C. § 30125(e)(1) by impermissibly soliciting non-federal funds in connection with the fundraiser invitation.⁵²

1. "Louisiana Bayou Weekend" Fundraiser Invitation

As noted above, the flyer invitation for the "Louisiana Bayou Weekend" Fundraiser features Vitter as the "special guest," specifies that the cost to attend the event as \$5,000, and lists Guastella's e-mail address as the method to reserve a spot for the event.⁵³ The invitation contains two disclaimers. The first disclaimer appears immediately below Guastella's e-mail address and reads as follows:

Contributions to The Fund for Louisiana's Future are not deductible as charitable contributions for federal income tax purposes. Contributions from foreign nationals are prohibited. Federal government contractors should consult counsel prior to making a contribution to The Fund for Louisiana's Future. The Fund for Louisiana's Future is registered with the Federal Election Commission as an independent expenditure-only committee and the Louisiana Board of Ethics as a state PAC. The Fund for Louisiana's Future may accept contributions up to \$100,000 per election cycle from individuals, corporations, and other organizations. The Fund for Louisiana's Future's spending is independent, and it does not make contributions to, or coordinate its spending with, any candidates or political parties.⁵⁴

⁵² This basis for liability is independent of the conclusions and recommendations set forth above.

⁵³ Compl. at Ex. B.

⁵⁴ *Id.*

1 The second disclaimer appears in a box immediately below the first disclaimer and reads:

2 Paid for by The Fund for Louisiana's Future.
3 Not Authorized by any Candidate or Candidate's Committee.
4 6804 Marshall Foch Street, New Orleans, LA 70124.
5 (202) 722-0909. LouisianasFuture.com.
6

7 The Complaint alleges that Vitter, through his agent, Guastella, authorized the solicitation
8 on the invitation and, as a result, Vitter impermissibly solicited contributions up to \$100,000 per
9 election cycle from individuals, corporations and other organizations because the solicitation was
10 not limited solely to a non-federal election.⁵⁵ The Complaint also argues that the disclaimers on
11 the invitation flyer are defective because they do not contain "a clear and conspicuous" statement
12 that the solicitation is not being made by Vitter, the federal candidate.⁵⁶

13 In response, the Committee asserts that Vitter did not approve the use of his name on the
14 flyer, nor does the flyer expressly or implicitly state that Vitter is extending the invitation to
15 attend or solicit a contribution.⁵⁷ The Committee argues that as a "special guest" Vitter was not
16 making the solicitation, and that the Commission's regulations permit the use of his name on the
17 flyer as a "special guest," and doing so does not constitute a solicitation of funds by him.⁵⁸ It
18 further argues that, even if the flyer were misconstrued to be a solicitation by Vitter, the flyer
19 would be permissible because the amount requested complies with the amount that may be
20 solicited by federal candidates and officeholders for an IEOPC.⁵⁹

⁵⁵ Compl. at 6-8, 11, n.22.

⁵⁶ Compl. at 7 citing 11 C.F.R. § 300.64(C)(3)(i)(A)-(B); *Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events*, Final Rules and Explanation and Justification, 75 Fed. Reg. 24,375, 24,381 (May 5, 2010).

⁵⁷ Vitter Resp. at 5-6.

⁵⁸ *Id.* at 1, 5.

⁵⁹ *Id.* at 6.

1 As the invitation solicits contributions from federally impermissible sources and appears
2 to solicit amounts up to \$100,000, if Vitter or his agent “approve[d], authorize[d], agree[d] to, or
3 consent[ed] to the use of the [his] . . . name or likeness in [the] publicity,” the invitation required a
4 disclaimer clearly and conspicuously stating that the solicitation is not being made by him.⁶⁰
5 Vitter denies that he approved the use of his name on the invitation,⁶¹ but his response is silent as
6 to whether anyone else from his campaign, acting on his behalf, approved, authorized, agreed to,
7 or consented to the inclusion of his name on the invitation. Moreover, the fact that Guastella
8 (who was also fundraising for the Vitter Committee during this time period⁶²) appears as the
9 contact person on the invitation, raises questions as to whether she, as an agent of Vitter,
10 approved the use of his name and likeness on the invitation or otherwise secured his approval.⁶³
11 In light of the Fund’s acknowledged purpose to support Vitter in his “political endeavors,” and
12 the commonalities between the Fund and Vitter, as described above, it is reasonable at the initial
13 reason to believe stage to infer that Vitter or one of his agents “approve[d], authorize[d], agree[d]

⁶⁰ See 11 C.F.R. § 300.64(c)(3)(i)(A),(B); see also Non-Federal Fundraising Events Revised E&J, 75 Fed. Reg. at 24,381. Here, the existing disclaimers do not conform to the regulation’s disclaimer specifications because they do not clearly state that Vitter is not soliciting funds. See, e.g., 11 C.F.R. § 300.64(c)(3)(iv); Non-Federal Fundraising Events Revised E&J, 75 Fed. Reg. at 24,381. The flyer fails to state that corporate and labor union contributions are prohibited, and failure to do so constitutes a solicitation of those funds, even if only implicitly. See First Gen. Counsel’s Rpt. at 11-12, MUR 6529 (McLeod). See 52 U.S.C. § 30125(e)(1)(A), (B).

⁶¹ Vitter’s Response states, “even assuming *arguendo* that Senator Vitter approved of the use of his name on the flyer (which he did not)…” Vitter Resp. at 5.

⁶² See David Vitter for U.S. Senate, 2013 October Quarterly Report at 80-81 (Oct. 14, 2013) (disclosing disbursements to Guastella as a fundraising consultant as follows: July 1, 2013 — \$4,000; August 1, 2013 — \$4,000; September 2, 2013 — \$4,000).

⁶³ Without a clear record that no one acting as Vitter’s agent approved the use of his name or photo on the invitation, the facts of this matter are distinguishable from those in MUR 6075 (Bill Zedler) in which the Commission found no reason to believe that U.S. Representatives Joe Barton and Kay Granger violated the Act where their agreements to serve as “honorary hosts” at a Zedler campaign fundraiser were made through staff and neither they, nor their respective staffs, reviewed or were otherwise aware of, and had not agreed to be featured in, the pre-event publicity that solicited non-federal funds. See Factual & Legal Analysis at 2; MUR 6075. This distinction in the factual record (in addition to the fact that Barton and Granger, unlike Vitter, were mere honorary hosts and not also beneficiaries of the event; and that here, the contact name on the invitation is an individual who simultaneously serves as a fundraising agent for Vitter) makes MUR 6075 materially different from this matter.

1 to, or consent[ed] to” the use of his name and photograph in the invitation.⁶⁴ Further, Vitter’s
2 denial that he authorized the use of his name and photograph does not overcome this inference
3 because the denial is limited only to Vitter personally, thereby failing to address the possibility
4 that one of his agents provided authorization on his behalf. Accordingly, the Commission finds
5 reason to believe that Vitter violated 52 U.S.C. § 30125(e) in connection with the Louisiana Bayou
6 Weekend fundraiser invitation.

7 **2. The Fund’s Website**

8 The homepage of the Fund’s website focuses on Vitter. The website as it appeared on
9 March 18, 2014, discusses Vitter’s legislation proposing an amendment to “cut health subsidies
10 for congressional and senior executive branch officials” and asks the reader to “sign” a petition
11 supporting the legislation by providing the reader’s name, zip code, and e-mail address.⁶⁵ At the
12 top of the homepage is a banner containing the words: “*the Fund for Louisiana’s Future*,” and a
13 photograph of Vitter next to a link labeled “Contribute.” Clicking the “Contribute” link redirects
14 the reader to a separate web page that provides instructions on how to make a contribution to the
15 Fund in amounts varying from \$25 to \$25,000 or more. This separate web page contains the same
16 banner and photograph of Vitter.

17 The homepage contains two disclaimers, the first states, “Paid for by The Fund for
18 Louisiana’s Future. Not authorized by any candidate or candidate’s committee.” A second
19 disclaimer sets forth:

20 The Fund for Louisiana’s Future is registered with the Federal
21 Election Commission as an independent expenditure-only
22 committee and the Louisiana Board of Ethics as a state PAC. The

⁶⁴ See *supra* pp. 10-11 (discussing reason to believe standard).

⁶⁵ Compl. Ex. A.

1 Fund for Louisiana's Future may accept contributions up to
2 \$100,000 per election cycle from individuals, corporations, and
3 other organizations.
4

5 The Complaint argues that the website violates the Act because it contains a photograph of
6 Vitter, but does not include disclaimers stating that he is soliciting only contributions that comply
7 with federal limits and source prohibitions.⁶⁶ Vitter asserts that neither he, nor the Committee,
8 approved, authorized, agreed to, or otherwise consented to the use of Vitter's pictures on the Fund
9 website, and argues that use of his publicly available photographs does not mean there was
10 coordination, does not taint independent speech, and does not constitute a solicitation by him.⁶⁷
11 As to the "Contribution" page, Vitter asserts that the solicitation was being made by the Fund, and
12 argues that because there is no statement by him urging persons to make a contribution in any
13 amount, that no disclaimer was required.⁶⁸

14 As with the fundraiser invitation, if Vitter approved the use of his photograph on the
15 Fund's website, he violated section 30125(e) because the website contains a donation page, which
16 solicits funds in amounts exceeding the limitations, and from sources prohibited by the Act. A
17 photograph of Vitter appears at the top of the Fund's home page next to a link labeled
18 "contribute," and a larger photograph of him occupies nearly one-quarter of the donation page
19 asking for contribution amounts ranging from \$25 to \$25,000 or "Other."⁶⁹ A statement below
20 "Confirm and Submit" includes that "The Fund for Louisiana's Future may accept contributions

⁶⁶ *Id.* at 4-5, Ex. A.

⁶⁷ Vitter Resp. at 12-14 citing MUR 5711 (Angelides); MUR 5743 (Betty Sutton for Congress); MUR 5996 (Tim Bee). In addition, Vitter argues that the display of his photo on the homepage did not constitute a solicitation by him because the homepage itself was not a solicitation and not dedicated to making contributions. Vitter Resp. at 14.

⁶⁸ Vitter Resp. at 14.

⁶⁹ Compl. Ex. A.

1 up to \$100,000 per election cycle from individuals, corporations, and other organizations.”⁷⁰

2 Both the home page and donation page contain a disclaimer stating: “Paid for by The Fund for
3 Louisiana’s Future. Not authorized by any candidate or candidate’s committee.”⁷¹

4 Even if the Fund obtained Vitter’s photograph from publicly available material, the
5 question remains whether Vitter or his agents approved, authorized, agreed, or consented to the
6 use of his photograph on the Fund’s website. Unlike the fundraiser invitation, however,
7 Respondents deny that Vitter *or* the Committee approved the use of his photographs on the
8 website. The other compelling facts about the connections between the Fund and Vitter still exist,
9 and could reasonably support an inference that Vitter or one of his agents “approve[d],
10 authorize[d], agree[d] to, or consent[ed] to” the use of his name and photograph in the Fund’s
11 website,⁷² but in light of the denial, the Commission makes no specific findings at this time with
12 respect to this allegation about the use of Vitter’s name and likeness on the Fund’s website.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *See supra* pp. 8-12.

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL & LEGAL ANALYSIS**

4
5 RESPONDENTS: The Fund for Louisiana's Future and Charles
6 Spies in his official capacity as treasurer

MUR 6798

7
8 **I. INTRODUCTION**

9 The Complaint alleges that then United States Senator and Louisiana gubernatorial
10 candidate David Vitter, his principal campaign committee, David Vitter for U.S. Senate, and his
11 agents Courtney Guastella and Lisa Spies, solicited, raised and spent non-federal funds (*i.e.*, soft
12 money) for The Fund for Louisiana's Future (the "Fund"), an independent-expenditure-only
13 political committee ("IEOPC") that supported Vitter's candidacies for United States Senate and
14 Governor of Louisiana, in violation of the Federal Election Campaign Act of 1971, as amended,
15 (the "Act").¹

16 The Fund denies violating the Act in connection with its fundraising and spending. The
17 Fund asserts that it permissibly raised and spent non-federal funds because it is independent of the
18 Vitter Committee, and the purpose of the Fund is to make independent expenditures.²

19 As explained below, the available record indicates that Vitter may have "established,
20 financed, maintained or controlled" the Fund, thus precluding the Fund from permissibly raising
21 and spending non-federal funds, and that Vitter may have solicited non-federal funds for the Fund
22 when his name and photo appeared on the Fund's solicitations. Accordingly, the Commission
23 finds reason to believe that the Fund violated 52 U.S.C. § 30125(e)(1).

24

¹ See Compl. at 1 (Mar. 18, 2014).

² Fund Resp. at 4 (May 12, 2014) (joint Response filed by the Fund, Guastella, and Spies); *see also* Statement of Organization (Fund for Louisiana's Future) (Jan. 28, 2013).

1 **II. FACTS**

2 David Vitter was elected to the United States Senate from Louisiana in 2004 and 2010.
3 His principal campaign committee is David Vitter for U.S. Senate and William Vanderhook is its
4 treasurer (the "Vitter Committee"). In 2011, Vitter filed a Statement of Candidacy for reelection
5 to the Senate in 2016.³ Courtney Guastella and Lisa Spies have each served as fundraisers for the
6 Committee. Lisa Spies held the title of D.C. Finance Director of the Committee at least as early
7 as March 2014, and Guastella has been identified as the Committee's Finance Director.⁴
8 According to the Vitter Committee, Guastella and Lisa Spies were independent contractors for the
9 Committee and were not employed by the campaign, with Guastella authorized to raise funds
10 within Louisiana, and Lisa Spies authorized to raise funds in Washington, DC, and other locations
11 outside of Louisiana.⁵

12 In January 2013, lawyer Charles Spies formed the Fund and registered it with the
13 Commission as an IEOPC.⁶ The Fund was created amidst speculation that Vitter was considering
14 a run for governor of Louisiana in 2015.⁷ The Fund stated in its FEC Statement of Organization

³ Subsequently, in November 2015, Vitter decided to retire from the Senate at the end of his term in January 2017; at all times relevant to this matter, Vitter was a candidate for Senate.

⁴ See Compl. at n.7. See also biography of Lisa Spies, available at <http://www.thelsgroup.com/team>; Alexander Burns, *David Vitter Stokes Buzz about Governor Bid*, POLITICO (May 22, 2013). The Committee first started making disbursements to Guastella in 2005, and to Lisa Spies's fundraising firm, The LS Group, Inc., in 2009. According to the Committee's disclosure reports, between 2011 and 2013, it disbursed \$212,776 to Guastella and \$142,481 to Lisa Spies for "fundraising consulting."

⁵ Fund Resp. at 2.

⁶ See FEC Statement of Organization (Jan. 23, 2013). The Fund, through Charles Spies, also registered a state committee with the Louisiana Board of Ethics. See Louisiana Ethics Administration Program Statement of Organization (Jan. 28, 2013), available at <http://ethics.la.gov/CampaignFinanceSearch/13000776.pdf>. The Louisiana statement of organization identifies Charles Spies as chairperson and treasurer of the state committee.

⁷ See, e.g., Associated Press, *Super PAC fuels speculation that Vitter eyeing run for governor*, THE TIMES PICAYUNE ONLINE (Jan. 28, 2013), available at http://www.nola.com/politics/index.ssf/2013/01/super_pac_could_help_vitter_if.html.

1 that its purpose is to make independent expenditures in support of conservative candidates in
2 "federal, state, and local elections in Louisiana."⁸ The Fund has acknowledged, however, that it
3 was actually organized for a more specific purpose — to support Vitter in his "political
4 endeavors."⁹ Charles Spies, who serves as the Fund's treasurer and counsel, described the Fund
5 as a "vehicle for supporters for Sen. Vitter and his conservative leadership" to back his political
6 future whether he decides to seek a third Senate term in 2016 or run for Louisiana governor," and
7 further explained that it "will help combat Democratic Party officials intent on doing 'everything
8 they can to stop' Vitter."¹⁰

9 Guastella and Lisa Spies were fundraisers for the Fund at the same time they provided
10 fundraising services to the Vitter Committee.¹¹ From September 5–7, 2013, the Fund held a
11 three-day "Louisiana Bayou Weekend" fundraising event featuring an airboat swamp tour and
12 alligator hunt and Vitter attended the event.¹² The Fund sent out a "Save the Date" invitation flyer
13 prior to the event listing Vitter as a "Special Guest" and asking \$5,000 per person to attend.¹³
14 The flyer also stated that the Fund may accept contributions up to \$100,000 per election cycle
15 from individuals, corporations, and other organizations.¹⁴ The invitation lists fundraiser Courtney

⁸ See FEC Statement of Organization.

⁹ See Request for Consideration of a Legal Question by the Commission, David Vitter for U.S. Senate (letter from Charles S. Spies, Aug. 17, 2016) at 1 (attached to Memorandum to the Commission, LRA 1027 (Sept. 29, 2016)).

¹⁰ Compl. at 3, n.5 citing Fredreka Schouten, *Super PACs Gear Up for Individual Senate Battles*, USA TODAY (Jan. 3, 2014).

¹¹ During 2013, the Fund disbursed a total of \$148,380 to Guastella and \$27,727 to the LS Group, Inc.; during 2015, the Fund disbursed \$57,000 to Guastella and \$24,992 to LS Group, Inc.

¹² Compl. at 4.

¹³ Compl. Ex. B.

¹⁴ *Id.*

1 Guastella as the contact to reserve a spot and contains a disclaimer that it is "Paid for by The Fund
2 for Louisiana's Future. Not Authorized by any Candidate or Candidate's Committee."¹⁵

3 Four months after this fundraiser, on January 21, 2014, Vitter announced his candidacy for
4 Governor of Louisiana in the 2015 election. During Vitter's gubernatorial campaign, the Vitter
5 Committee was the Fund's single biggest contributor, ultimately contributing a total of \$950,000
6 between February 2014 and July 2015 — \$100,000 on February 14, 2014; \$740,000 on
7 November 12, 2014; \$50,000 on December 31, 2014; and \$60,000 on July 10, 2015.

8 The Fund supported Vitter throughout his gubernatorial candidacy by continuing to focus
9 its fundraising efforts and activities on Vitter. For example, a screenshot of the Fund's website
10 homepage from March 18, 2014, shows a large picture of Vitter at the top with "*the Fund for*
11 Louisiana's Future" superimposed on the left side of the photograph. Underneath the photo is a
12 discussion of Vitter's proposed federal health care provision with a request for the reader to
13 "sign" a petition supporting the provision by providing name, zip code, and e-mail address.¹⁶ The
14 home page contains a disclaimer, "Paid for by The Fund for Louisiana's Future. Not authorized
15 by any candidate or candidate's committee."¹⁷

16 A screenshot of the website's donation page shows that it was topped by a larger version
17 of the same photograph and statement that appeared on the website's homepage.¹⁸ The page
18 offers a selection of contribution amounts ranging from \$25.00 to \$25,000.00 plus "other."¹⁹ The

¹⁵ *Id.*

¹⁶ Compl. at Ex. A.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

1 donation page also contains a disclaimer, "Paid for by The Fund for Louisiana's Future. Not
2 authorized by any candidate or candidate's committee."²⁰ A "Confirm and Submit" field on the
3 donation page contains statements that the contributions may be personal or corporate and that the
4 Fund "may accept contributions up to \$100,000 per election cycle from individuals, corporations,
5 and other organizations."²¹

6 The Fund also spent significant funds on activities directly supporting Vitter's
7 gubernatorial candidacy. During Vitter's gubernatorial campaign, the Fund spent approximately
8 \$5.1 million for media buys and production, direct mail design, postage and printing, digital
9 advertising, and phone banks in opposition to Vitter's opponents in the primary and general 2015
10 Louisiana gubernatorial elections.²²

11 III. LEGAL ANALYSIS

12 The Complaint alleges the Fund violated the Act by soliciting contributions in amounts
13 that exceeded the federal contribution limits and came from prohibited sources even though it

²⁰ *Id.*

²¹ *Id.* On February 18, 2014, the Fund filed a complaint in the U.S. District Court for the Eastern District of Louisiana seeking declaratory and injunctive relief that the Louisiana campaign finance provision that limited to \$100,000 the amount of money that may be contributed to, or accepted by, a political committee during the course of a four-year period is unconstitutional as applied to committees like the Fund that engage in only independent expenditures. *See Fund for Louisiana's Future v. La. Board. Of Ethics, et al.*, 17 F. Supp.3d 562 (E.D. La. May 2, 2014). The Court granted the Fund's motion for a preliminary and permanent injunction enjoining the Board from enforcing the state limit as to contributions made to political committees that only make independent expenditures. 17 F. Supp.3d at 574.

²² *See* The Fund for Louisiana's Future 2015 Year-End Report, Schedule B (Jan. 29, 2016); *see also* Louisiana Ethics Administration Program Reports for The Fund for Louisiana's Future: 40 Days After General Rpt. (Form 40-G) (Jan. 4, 2016), Election Day Expenditures Rpt. (Form EDE-G) (Dec. 1, 2015), 10 Days Prior to General Rpt. (Form 10-G) (Nov. 12, 2015), 10 Days Prior to Primary Rpt. (Form 10-P) (Oct. 28, 2015), 30 Days Prior to Primary Rpt. (Form 30-P) (Oct. 28, 2015). The Fund raised approximately \$7.4 million and spent approximately \$7.3 million from its inception in January 2013 through the end of 2016.

1 planned to use the funds it received to support Vitter's election to both state *and* federal office.²³

2 As discussed with specificity below, the Fund denies the allegations.

3 The Act prohibits federal candidates and officeholders, their agents, and entities directly
4 or indirectly established, financed, maintained or controlled by or acting on behalf of one or more
5 candidates or individuals holding federal office, from "solicit[ing], receiv[ing], direct[ing],
6 transfer[ing], or spend[ing] funds in connection with an election for Federal office . . . unless the
7 funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act."²⁴ This
8 provision, among others enacted as part of the Bipartisan Campaign Reform Act of 2002, was
9 designed to "plug the soft-money loophole."²⁵

10 It is undisputed that the Fund solicited and received funds in connection with an election
11 for federal office that were outside of the limits and prohibitions of the Act.²⁶ The Commission
12 evaluates below whether the solicitation and acceptance of those contributions resulted in any of
13 the Respondents violating the soft money prohibition of the Act and concludes that there is reason
14 to believe that the Fund impermissibly raised and spent non-federal funds because it may have

²³ Compl. at 1-5.

²⁴ 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. § 300.61.

²⁵ *McConnell v. FEC*, 540 U.S. 93, 133 (2003).

²⁶ The Fund's stated purpose is to support conservative candidates in both federal and non-federal elections, and its treasurer has publicly explained that its purpose to support Vitter's candidacies in both the Senate and gubernatorial elections. *See supra* notes 8-10. Further, the Fund's disclosure reports show that, as an IEOPC, the Fund accepted numerous contributions from otherwise impermissible sources, and in amounts that exceed the Act's monetary limitations.

1 been established, financed, maintained and controlled by Vitter.²⁷

2 To determine whether a candidate or his or her agent “directly or indirectly establishes,
3 finances, maintains, or controls” an entity, the Commission considers a non-exhaustive list of ten
4 factors set forth in 11 C.F.R. § 300.2(c)(2), as well as any other relevant factors, in the context of
5 the overall relationship between the federal candidate or officeholder and the entity.²⁸ Among
6 those factors is whether the candidate “provides funds or goods in a significant amount or an
7 ongoing basis to the entity,” and whether the candidate “has authority or ability to direct or
8 participate in the governance of the entity,” or “had an active or significant role in the formation
9 of the entity.”²⁹

10 The key factor in this matter is whether the Vitter Committee provided funds in a
11 “significant amount or an ongoing basis” to the Fund. The Commission has approached the
12 question of what constitutes “a significant amount” on a case-by-case basis in view of all the
13 relevant circumstances.³⁰ It has explained that “amounts that are so large or . . . that comprise
14 such a substantial percentage of the organization’s receipts” would be considered “financing” a
15 committee under section 300.2.³¹ In Advisory Opinion 2006-04 (Tancredo), the Commission
16 considered whether contributions constituting 50% and 25% of the total funds received by an

²⁷ The “soft money” provision of the Act provides an exception for the solicitation, receipt, or spending of funds by an individual who is also a candidate for State or local office solely in connection with such election for State or local office if the solicitation, receipt, or spending of funds is permitted under State law and refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate. *See* 52 U.S.C. § 30125(e)(2). Here, the exception does not apply (and Respondents do not argue that it does) because, as noted above, the Fund was formed to support Vitter in his political endeavors, both state and federal. Vitter was a United States Senator throughout the time period relevant to this matter, and did not announce that he was not running for re-election to federal office until after he lost the gubernatorial election.

²⁸ *See* Advisory Op. 2006-04 (Tancredo) at 3.

²⁹ *Id.* § 300.2(c)(2)(ii), (v), (vii), (ix).

³⁰ *Id.* § 300.2(c)(2).

³¹ *See id.*; Advisory Op. 2004-29 (Akin) at n.4; Advisory Op. 2004-25 (Corzine) at 4.

1 entity at the time the contribution was made would be a significant amount.³² The Commission
2 determined that 50% would be a significant amount, and that "significant" did not require a
3 majority of funds to be provided by a single source.³³ The Commission further determined that
4 25% of total funds was also a significant amount when considered in the context of the overall
5 relationship between the sponsor and the entity.³⁴

6 The current record provides reason to believe that the Fund was established, financed,
7 maintained, or controlled by Vitter or his agents because the Vitter Committee "provide[d] funds
8 ... in a significant amount or an ongoing basis" to the Fund. The Vitter Committee provided the
9 Fund with a total of \$950,000 on an ongoing basis over approximately a year and a half.³⁵ This
10 amount makes the Vitter Committee the Fund's single biggest contributor by far over the course
11 of its entire existence (the next largest contributor provided only \$255,000).³⁶ In 2014, the
12 contributions from the Vitter Committee represented 37% of the total funds raised that year.
13 Therefore, relative to the funds raised by any other single source, the contributions from the Vitter
14 Committee represent a "substantial percentage of the organization's receipts."³⁷ And further

³² AO 2006-04 (Tancredo) at 3-5.

³³ *Id.* at 4.

³⁴ *Id.* at 4-5. The advisory opinion was submitted on behalf of Congressman Thomas Tancredo, who was interested in contributing campaign committee funds to a state ballot initiative committee. Among the contextual factors considered by the Commission in determining that 25% funding was a "significant amount" was that the funds provided by Tancredo's committee would be used as "seed money" for the ballot initiative committee, the ballot initiative committee would share its polling data with Tancredo, and that Tancredo was closely identified with the issue being supported by the ballot initiative and intended to spend his committee's funds to directly support the ballot initiative. *Id.*

³⁵ The contributions from the Vitter Committee to the Fund were as follows: on February 14, 2014 -- \$100,000; on November 12, 2014 -- \$740,000; on December 31, 2014 -- \$50,000; on July 10, 2015 -- \$60,000.

³⁶ See Fund for Louisiana's Future 2015 Year-End Report, Schedule A, Receipts (\$225,000 aggregate receipts from a corporate executive as follows: September 23, 2015 - \$100,000; November 10, 2015 - \$50,000; November 13, 2015 - \$75,000).

³⁷ See AO 2006-04 (Tancredo) at 3.

1 examination of the Fund's overall receipts at the time of each of the Vitter Committee's
2 individual contributions shows that the Vitter Committee had contributed 23% of the Fund's total
3 receipts at the time of both the November 12 and December 31, 2014, contributions.³⁸

4 The context of the overall relationship between Vitter and the Fund provides further
5 reason to believe that the funds provided by the Vitter Committee were a "substantial percentage
6 of the organization's receipts" and, thus, that the Fund was established, financed, maintained, or
7 controlled by Vitter.³⁹ The Fund has acknowledged that it was formed to support Vitter. Of the
8 approximately \$7.4 million dollars the Fund spent in its lifetime, there is no indication that it
9 solicited any contributions or made any expenditures to further the election of any other
10 candidate.⁴⁰ Further, Vitter was involved in the Fund's fundraising efforts, which were focused
11 exclusively on raising funds to help get Vitter elected to office in Louisiana. Most notably, Vitter
12 was featured on the invitation for the Fund's Louisiana Bayou Weekend fundraiser as a "special
13 guest" (no other candidate is pictured or mentioned on the flyer),⁴¹ and Vitter attended the

³⁸ At those times, the Fund had received a total of \$3,201,043 and \$3,920,543, respectively. *See id.* at 4 (examining the proposed contributions from Tancredo's campaign committee as percentage of overall lifetime receipts of the state ballot initiative committee at the time the contribution was to be made). Based on the Fund's federal disclosure reports, it appears that its activities essentially ceased after the Louisiana gubernatorial election in November 2015.

³⁹ *See* 11 C.F.R. § 300.2(c)(2).

⁴⁰ The Fund did make a single \$250,000 contribution to the Republican Governors Association in 2015. *See* Fund for Louisiana's Future 2015 Year-End Report, Schedule B, Disbursements (disclosing \$250,000 contribution to Republican Governors Association made on November 13, 2015).

⁴¹ The Fund's treasurer, Charles Spies, provided a declaration in the lawsuit the Fund filed against Louisiana, *see* n.23 *supra*, in which he averred that the Fund "was not established, financed, maintained, or controlled by a political committee authorized by any political candidate for office." *Fund for Louisiana's Future*, 17 F. Supp. 3d 562, 573 (E.D. La. May 2, 2014). The Court accepted the assertion in the Fund's declaration and determined that the Fund was independent. The Court, however, did not have the benefit of the information currently before the Commission, *e.g.*, there is no indication that the Court was aware of the \$100,000 that the Vitter Committee had already contributed to the Fund at that point in time.

1 fundraiser.⁴² Moreover, Vitter is the face of the Fund's website — his photograph and statements
2 are prominently and exclusively featured on the website, including on its donation page. Finally,
3 the Fund uses the same fundraising consultants (Lisa Spies and Guastella) as the Vitter
4 Committee, an overlap which may indicate a "formal or ongoing relationship" of the sort that the
5 Commission's regulation suggests may serve as evidence of a covered relationship under section
6 30125(e) to conclude that the Committee "established, financed, maintained, or controlled the
7 Fund."⁴³

8 All of these facts reflect a relationship between the Vitter Committee and the Fund that
9 was bound by common goals (getting Vitter elected), overlapping consultants (Spies and
10 Guastella), fundraising coordination (the Bayou fundraiser), and the Vitter Committee's
11 significant financial investment in the Fund (almost a million dollars provided to the Fund over a
12 year and a half). At this stage in the enforcement process, *i.e.*, the initial reason to believe stage,
13 these facts collectively support a finding that Vitter may have established, financed, maintained,
14 or controlled the Fund as set forth in section 300.2(c) by providing funds "in a significant amount
15 or an ongoing basis" to the Fund. A reason to believe determination is not conclusive that
16 Respondents violated the Act but rather recognizes the seriousness of the allegations and provides
17 an opportunity to conduct an administrative fact-finding inquiry to resolve whether in fact a

⁴² The Commission has concluded that federal candidates may appear as a special guest at a so-called single-candidate Super PAC fundraisers without violating the soft money provisions of the Act at 52 U.S.C. § 30125(e) so long as the candidate complies with the requirements at 11 C.F.R. § 300.64 and restricts any solicitations to federal funds. *See* Advisory Opinion 2015-09 at 8 (Senate Maj. PAC, *et al.*). *See also* 11 C.F.R. § 300.64(b)(1); *see also* Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events, 75 Fed. Reg. 24,375, 24,379 (May 5, 2010) ("Non-Federal Fundraising Events Revised E&J"). It has never, however, concluded that one could do so if non-federal funds are being solicited at such an event, including where the non-federal funds are specifically solicited for the support of that particular candidate. *See* Advisory Opinion 2015-09 at 8, n.7 (Senate Maj. PAC, *et al.*).

⁴³ 11 C.F.R. § 300.2(c)(iv)-(vi).

1 violation occurred.⁴⁴ The Commission has determined that a reason to believe finding is
2 appropriate "in cases where the available evidence in the matter is at least sufficient to warrant
3 conducting an investigation."⁴⁵ Under the circumstances presented here, an investigation is
4 warranted to determine the nature and extent of the relationship between Vitter, the Vitter
5 Committee, and the Fund.

6 Accordingly, the Commission finds reason to believe that The Fund for Louisiana's
7 Future and Charles Spies in his official capacity as treasurer, David Vitter, and David Vitter
8 for U.S. Senate Committee and William Vanderbrook in his official capacity as treasurer
9 violated 52 U.S.C. § 30125(e)(1) by soliciting, receiving, directing, transferring, or spending
10 non-federal funds to advance the federal candidacy of Senator Vitter.

⁴⁴ See Statement of Policy Regarding Commission Act in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007) (A reason to believe finding indicates "only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred.").

⁴⁵ See *id.* (reason to believe finding followed by an investigation is appropriate where complaint "credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred" and, if so, its exact scope).